Supreme Court U.S.
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NO. ____

In the Supreme Court of the United States

May Term 2001

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Petitioners

vs.

RICHARD FISCHBEIN; TIME, INC.; BELINDA LUSCOMBE; NEWSWEEK MAGAZINE, and JOHNNIE ROBERTS,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

I. Did the Trial and Third Circuit Courts give due deference to Your Court's holdings in *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991); *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989); the Pennsylvania Supreme Court in *Ertel v. The Patriot-News Co.*, 544 Pa. 93, 674 A.2d 1038 (1996) and *Curran v. Philadelphia Newspapers, Inc.*, 497 Pa. 163, 439 A.2d 652 (1981); its own opinion in *Schiavone Const. Co. v. Time, Inc.*, 847 F.2d 1069 (3d Cir. 1988) and the Superior Court in *Tucker v. Philadelphia Daily News, et al.*, 757 A.2d 938 (Pa. Super. 2000); *Merriweather v. Philadelphia Newspapers, Inc.*, 453 Pa. Super. 464, 684 A.2d 137, 141 (1996); and *Savitsky v. Shenandoah Valley Pub. Corp.*, 389 Pa. Super. 176, 566 A.2d 901, 903 (1989)?

II. In the framework of a summary judgment motion, does the evidence suffice to show that Time and/or Newsweek acted with the requisite knowledge of falsity or reckless disregard as to the truth or falsity of the defamatory publication (847 F.2d 1069 (3d Cir. 1988) at 1089)?

III. Is it proper for a trial judge or an appellate court, at the summary judgment stage in a libel case, to disregard the usual summary judgment standard of review and instead to pick and choose, weigh and balance the alternative versions of the facts and to conclude from *one sentence* in a 447-page deposition that Plaintiffs will be unable *at trial* to sustain their clear and convincing burden of proving malice?

IV. What does a public figure have to do in the new millennium to withstand a summary judgment libel malice motion by the media?

V. Has Your Court and should Your Court address the inherent conflict between the First and Seventh Amendment in public person libel cases?

VI. In light of a burden of proof that is so harsh that 70% of libel cases brought against the press (where the *Sullivan* rules apply) end with Defendants' Motion for Summary Judgment and of those that go to judgment only an estimated 5-10% are upheld? Is it time to revisit *New York Times v. Sullivan*, 376 U.S. 254 (1964) and its progeny in the context of the current status of public persons and the media?

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RULE:

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Petition

IN THE SUPREME COURT OF THE UNITED STATES

C. DELORES TUCKER and
WILLIAM TUCKER, her husband,

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v.

TIME, INC.; BELINDA LUSCOMBE;
NEWSWEEK MAGAZINE, and JOHNNIE ROBERTS,

Respondents,

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States

REFERENCE TO THE OPINIONS DELIVERED IN THE COURTS BELOW

Reference is made to the February 14, 2001, Order of the United States Court of Appeals for the Third Circuit denying the petition for rehearing *en banc* (App. 1a) and the Third Circuit's Opinion (App. 3a) and Order (App. 32a) of January 9, 2001, addressing the substantive issues. Reference is further made to the Order and Opinion of the United States District Court for the Eastern District of Pennsylvania granting summary judgment to all Defendants dated February 9, 1999 (App. 33a—opinion, 46a—order).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit denying the Petition for Rehearing *En Banc* by C. DeLores Tucker and William Tucker, her husband, was entered on January 9, 2001, and certified on February 22, 2001. Jurisdiction in this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This diversity defamation case arises under libel theories of the common law and the First, Seventh, and Fourteenth Amendments to the United States Constitution incorporated by Your Court into the common law of libel in *New York Times v. Sullivan*, 376 U.S. 254 (1964). The relevant Federal statutes in this case include 28 United States Code §§1291 and 1332 concerning final decisions of district courts and the requirements for diversity of citizenship jurisdiction. The relevant Federal Rules in this case include Federal Rule of Civil Procedure 56(c), concerning a motion for summary judgment.

STATEMENT OF THE CASE

On July 21, 1997, C. DeLores Tucker, Chair of the non-profit National Political Congress of Black Women, Inc., former Secretary of State of the Commonwealth of Pennsylvania, and former Chair of the Democratic National Committee Black Caucus and National Board of the NAACP, and her husband filed a civil diversity lawsuit in the Eastern District of Pennsylvania against *twelve Defendants, including the Estate of Tupac Shakur* (App. 48a).

The lawsuit was *particularly* targeted at gangsta rap *marketers* Interscope and Death Row, and their principals for their 1995 SLAPP lawsuits (App. 63a, 78a), a Death Row two-page elimination ad which appeared in a rap magazine (App. 101a-103a), years of smut investigations, eleven days of repetitive depositions, *and* Tupac Shakur's All Eyez On Me's profane and defamatory lyrics accusing Mrs. Tucker of being a mother f—er and a traitor to her people.

Plaintiffs contended in the original Tucker I Complaint that, in *various* ways *including* the SLAPP lawsuits, the Death Row elimination ad, the smut investigations, eleven days of repetitive depositions, and Shakur's profane and defamatory lyrics, *Mrs. Tucker* sustained damages, including *severe emotional distress* (PAR 43), being held up as an object of scorn to more than 5,000,000 people [5,000,000 discs were sold], including children of Philadelphia and elsewhere (PAR 44), *defamation of character and reputation* (PARS 45, 46), *past and future medical expenses, mental pain and suffering, inconvenience and loss of life's pleasures, fears for her life, loss of personal freedom to travel freely when and where she desires* (PARS 47, 48), *great humiliation and embarrassment* (PAR 49). The Plaintiffs also sought punitive damages (Paragraph 61).

There was a boilerplate consortium count for Mr. Tucker:

> 50. Plaintiff's *husband*, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium. (emphasis supplied)

On July 31, 1997, the Tuckers issued a News Release (App. 104a)[1] which clearly stated that the main focus of the Plaintiffs' July 21, 1997, Complaint was on the *"gangstas in the suites."*

> Dr. C. DeLores Tucker Files $ Multi-Million Suit *Against Record Producers* of Gangsta Rap Filth. (emphasis supplied)

The News Release acknowledged that Mrs. Tucker had received death threats and that she was not unmindful of the risk to her life in her filing of the Tucker I action. The News Release echoed the Complaint's allegations of hours of depositions, surveillance and intimidation, emotional stress, death threats, reasonable fear for her life, and inability to travel freely without fear. Again, there was no mention of sex. Finally, the News Release stressed that if she should win the suit:

> ... I will use the money to help create a healthy and vigorous climate in which our rap, hip hop and other artists can flourish and grow in healthy, productive ways and not be enslaved to this greed-driven, race driven, porno driven, grossly sexist lyrical filth that particularly defames Black women, promotes drug use, violence and panders pornography to our children.

As a result of the Tuckers' News Release, Defendant co-administrator Attorney Fischbein, whose law firm represented the Shakur Estate was contacted by the news media. Mr. Fischbein was quoted in the *Los Angeles Times*, August 1, 1997: "[I]t's hard for me to conceive how these lyrics could destroy her sex life ... [b]ut we can only wait for the proof to be revealed in court." (App. 108a) From an Associated Press wire origination, more than 60 newspapers, many of whom were owned by large media corporations acted quickly to publish articles that asserted that Mrs. Tucker sought $10,000,000 *because lewd lyrics destroyed her sex life, e.g., New York Daily News*, August 5, 1997; *USA Today*, August 4, 1997; and *The Baltimore Sun*, August 2, 1997 (App. 110a, App. 113a, App. 114a).

---

[1] Discovery in this case was combined with *Tucker v. MTS, et al.*, No. 97-CV-4717, another case where the Eastern District also granted summary judgment, the Third Circuit affirmed, 229 F.3d 1139 (3d Cir. 2000), and Your Court denied certiorari, 121 S. Ct. 776 (2001).

Approximately a dozen gave a truthful factual account of the Tucker I Complaint, *e.g.*, *The Washington Post*, August 2, 1997 and *Jet*, September 1, 1997 (App. 116a, App. 118a).

Mrs. Tucker was hospitalized at the time of the News Release. Mr. Tucker, in recorded interviews, asserted that the media was distorting their Complaint against the gangsta record companies by focusing on sex. *See*, August 5, 1997, *The Philadelphia Tribune* article: "Tucker: Media distorts lawsuit." (App. 120a) *Also see*, *Philadelphia Daily News*, August 6, 1997 (App. 121a). *Also*, the August 11, 1997, "Music News of the World" article (App. 123a).

From the beginning, Plaintiffs' counsel unsuccessfully attempted to persuade the press that the Tucker Complaint had nothing to do with sex. *See*, *Philadelphia Daily News* article, August 2, 1997 (App. 127a-129a). *Also see:*

> *Media Has*
> *C. DeLores Tuckered*
>
> After filing a $10 *million* defamation lawsuit against Time Warner Records and the estate of murdered rap artist *Tupac Shakur*, anti-rap crusader *C. DeLores Tucker* is *now complaining that the media is out to distort the facts of the lawsuit*. Claiming that clever rhymes in Shakur's *"All Eyez on Me"* release such as "Delores Tucker, you're a mother_____" caused her "great humiliation, mental pain and suffering," Tucker included her husband, William, in the suit, claiming that he had suffered *"a loss of advice, companionship and consortium."* Although the *Inquirer* didn't even cover the filing of the suit, the *Daily News* trumpeted on its August 2 front page, *"C. DeLores Tucker Claims CD Gave Her A Dirty Rap: Suit vs. Shakur estate says "vile" lyrics ruined her rep and her sex life."* Daily News Managing Editor *Brian Toolan* defends the paper's treatment of the story, saying "it's generally understood that's what loss of consortium is supposed to mean in the law." *But Tucker's attorney, Richard C. Angino disputes this, stating that the phrase [loss of consortium] is a standard addition to lawsuits of this type and refers to all aspects of the marital relation-*

> *ship, not necessarily sex. "This is why people sometimes get so upset with the media," says Angino. One disinterested personal injury attorney who wished not to be named agrees with Angino ...*

Philadelphia Weekly, August 13, 1997 (App. 130a-131a). (Emphasis supplied and in original.)

The *Philadelphia Weekly* article was published one week before Tuckers' counsel spoke to Johnnie Roberts, Defendant [in Tucker II] reporter for Newsweek, *on August 20, 1997*. In a 15 minute interview, Tuckers' attorney attempted to persuade Roberts that, although a claim for loss of "consortium" *can* include the element of sex, it usually doesn't, that *it didn't in this particular case*, that the main focus of the lawsuit was the gangstas in the suites, that the media was mischaracterizing the Tucker I Complaint, that Fishbein as the administrator and attorney for the Shakur Estate was attempting to get his own spin out to the public. *No matter what he said*, Tuckers' attorney was convinced that Roberts had a story he wanted to publish and was going to publish.

Roberts made notes of the 15 minute conversation (App. 132a-133a). The Tuckers' attorney dictated a memo (App. 144a). Roberts was deposed for 4.75 hours and 239 pages. Tuckers' attorney was deposed for over 9 hours and 447 pages. Roberts admitted in his deposition that Fischbein's press agent suggested the story, supplied the material, including the Tucker I Complaint and his only basis for his sexual spin was that the word "consortium" *can* include sex (App. 306a).

Despite Plaintiffs' and their attorney's protestations to the contrary and the absence of the word sex in any of Mrs. Tucker's claims, Johnnie Roberts and Newsweek published "Grabbing At A Dead Star."

> *She* [Mrs. Tucker] and *her* husband claim that a lyrical attack by Tupac iced *their* sex life.

• • •

> Among other things, *she* [Mrs. Tucker] asserts that she feared for her life, had been humiliated *and can no longer have sex with her husband.* (emphasis supplied)

(App. 383a)

The Newsweek article treated Mr. and Mrs. Tucker as pirates trying to loot the Tupac Estate, sex pots attempting to claim $10 million for sex lives that had been allegedly destroyed by Shakur's lewd lyrics. Mr. and Mrs. Tucker were embarrassed and humiliated and gravely disappointed that they and their attorney were unable to persuade respected magazines such as Newsweek from pandering to its millions of worldwide readers with false and malicious gossip.

Approximately one month after filing the initial Complaint and after talking to Newsweeks reporters, on August 27, 1997, Plaintiffs' counsel filed an Amended Complaint in Tucker I which specifically stated that Mr. Fischbein "has continued to defame and harass plaintiff by holding her up in a false light" and by making "false and misleading statements regarding the claim herein."

> 45. Defendant Co-administrator of the Estate of Tupac Shakur [Fishbein] has continued to defame and harass plaintiff by holding her up in a false light even after the complaint in this matter was filed on June [July] 21, 1997.
>
> 46. Defendant Fishbein made false and misleading statements regarding the claim herein, through published statements that C. Delores Tucker filed suit *because of a "loss of her sex life." This statement was untrue, and Defendant Attorney Fishbein should have known it was untrue.* (emphasis supplied)

(App. 391a-392a)

Discovery produced Time's "The Library" (App. 401a) which revealed that Defendant Luscombe prepared her story with a preconceived theme—"Sex" and "Tucker"—plugged those two words into her computer, and created her story by taking bits of previously published articles, including Newsweek's "Grabbing At A Dead Star." She felt free to choose, disregard, or change words and

sentences from her "source" articles to emphasize the destroyed sex angle. She totally ignored articles that accurately described the lawsuit. Under the guise of literary license, she created the facts and published them as "news."

The Time "Shakur Booty" article (App. 443a) refers to litigation against the Tupac Shakur Estate as a new growth industry, references a number of frivolous cases against Shakur's Estate and concludes, "The prize for the most bizarre suit, however, goes to anti-rap warrior C. DeLores Tucker, *who claims* that lewd remarks made about her on Shakur's album *All Eyez On Me* caused her so much distress *that she and her husband have not been able to have sex.*" (emphasis supplied) Time's reporter justified her article by referencing other newspaper and magazine articles and her discussion with Mr. Fischbein.

On October 1, 1997, the Tuckers filed a Complaint against Fischbein, Time, Newsweek and their reporters asserting that they uttered or published defamatory comments about the Tuckers at a time when they knew or recklessly disregarded the truth or falsity of their utterances.

Fischbein, Time and Newsweek were successful in obtaining summary judgment as to non-defamatory content and absence of malice in the various newspaper and magazine articles. The Third Circuit reversed as to defamatory content as to all three defendants but affirmed as to the lack of malice with respect to Newsweek and Time (App. 3a).

REASONS FOR ALLOWANCE OF THE WRIT

I. The Third Circuit Panel Erred When It Affirmed The Grant Of Summary Judgment Against Newsweek By Relying Upon One Sentence Out Of Context From A 15-Minute Interview In A 447-Page Deposition To Conclude That The Tuckers Could Not Establish The Clear And Convincing Standard For Recklessness

As noted in the Factual Background, Newsweek's reporter on August 20, 1997, interviewed Plaintiffs' counsel with respect to an article that he planned to publish with respect to the Tupac Shakur Estate. Newsweek's reporter and Tuckers' counsel were deposed for two days. There are hundreds of pages of deposition testimony as well as Newsweek's reporter's notes and Tuckers' attorney's memorandum of that 15-minute conversation (App. 147a, 444a, 132a, 144a).

Disregarding these hundreds of pages of memoranda and deposition testimony pertaining to the Angino/Roberts 15-minute conversation, the Third Circuit Panel references one sentence of only two lines and then references it out of context to conclude that Plaintiff will be unable at trial to establish the clear and convincing standard for recklessness against Newsweek.

The panel starts with Plaintiffs' counsel's assertion in his deposition testimony:

> "consortium can mean, in some cases, sex. I said most of the time it doesn't, and it doesn't in this case."

(App. 516a-517a) The actual context is:

> A. I said do you have a copy of the Complaint. He says I do. I said would you turn to paragraph 50. I—I specifically said would you turn to paragraph 50. Would you read what's in paragraph 50. I say how many paragraphs are there in this Complaint. My recollection is 66 paragraphs. I said, you guys,

> and I was lumping him in with every other reporter, and I was frustrated by this time, because you're talking to people, you're trying to tell that this thing has nothing to do about sex, but they want to write about sex. I mean, there was no question in my mind as I talked to him, I said read those words. *I said consortium can mean, in some cases, sex. I said most of the time it doesn't, and it doesn't in this case*. And I'm looking at every one of you, when I had that conversation, I knew before it was ever going to be published that it was going to talk about sex. I could—I walked out of my office that day, and I don't remember who it was, but I said I just got off the phone with this guy from Newsweek. And I said it's like talking to the wall. No matter what I told him about this thing not involving sex, he wants to write about sex, and I said he's going to write about sex. (emphasis supplied)

The Panel goes on, however, to conclude that the Tuckers cannot proceed to trial because their attorney made another statement in another part of the deposition:

> Other statements in Angino's deposition severely weaken the Tuckers' position, however, and make it impossible for them to satisfy the clear and convincing standard. (emphasis supplied)

Slip. op. at 14 (App. 16a).

Although the Panel states that other statements make it impossible for the Tuckers to satisfy the clear and convincing standard, the Panel references only one statement: "I'm under oath, so I cannot say to you that I said specifically, this case does not involve sex" and references it out of context.

> A. My best recollection is that I told him that virtually all cases that I get involved in have consortium counts. Consortium counts basically—and I—I used examples, I really did. I told him the things you asked me, they can mean simple things like a wife or a husband being irritable, or the fact that, you know, they're not as nice as they used to be, or the fact that someone no longer cuts the grass for you [sic takes out the grass] or the garbage for you or does these things. I said only

> in the rarest of cases would you have a count that actually involves sex. *I'm under oath, so I cannot say to you that I said specifically, this case does not involve sex. But my recollection was everything I said the same thing.* You know— (emphasis supplied)

(App. 525a-526a)

The Panel fails to include the very next sentence that follows the one sentence relied upon by the Panel: "But my recollection was everything I said the same thing."

Your Court would rightfully castigate an advocate who did what the Panel did in this case—take one sentence out of context, omit the very next sentence, and fail to reference *The Philadelphia Weekly* article, the 15-minute conversation, the 447-page deposition, Angino's December 11, 1997 Memorandum, and Roberts' notes and deposition. It is also inappropriate for the Panel to assert that there were *other statements* when in reality there were none.

Angino's discussion of consortium starts at page 94 of his deposition (App. 445a) It continues *for over 100 pages* to 217 (App. 568a). The specifics of Angino's interview by Roberts commences on page 142 (App. 493a). On page 162 (App. 513a) Angino said:

> A. I can assure you, that Mr. Roberts came into our conversation with a story that he already wanted to write. And no matter what I said—no matter what I said, he was still going to write that same story. And I'm looking you right now in the eye, because when I was done with that conversation, I knew he wasn't going to do or say what I was telling him. I mean, you've talked to people and you know you've talked to them, and you know you've explained the thing, and you know they are going to go and do something different than what you said. And that's— we used the word lie. I don't think when he testified in his deposition that he was lying. But I can assure you that on August the 20th, he wasn't going to give the appropriate account of this story that I gave him. I can assure you of that.

(App. 513a-514a)

• • •

A. No. Johnnie Roberts wanted to write about sex. And if it doesn't involve sex, it's not worth writing about. ...

• • •

A. He struck me that he was going to do it here. I—I didn't know Johnnie Roberts at the time.

• • •

Q. ... Do you think it's possible that you did not use the exact words in that conversation to Mr. Roberts, that the claim in this particular case doesn't have anything to do with sex, that you meant that, that you maybe even thought that you said those exact words or something like those words, but that maybe you didn't actually say it. Isn't that—is that possible?

A. The words I used, the tenor of what I said, was this is not a case where lewd lyrics had any effect upon Mrs. Tucker's sex life. The language was not intended for that purpose. And I'm telling you, and I am a person who will never, ever say anything under oath or otherwise, that I don't firmly believe, I knew he wasn't going to listen to me. And you can ask your questions and try to do what you do and just as you did—

Q. Well, let me just ask you this question then, Mr. Angino. Do you recall what words you used—what precise words you used, to convey to Mr. Roberts, the idea that this case did not involve sex at all?

• • •

A. I was convinced that he was ignoring it all and was going to write—because he—he kept being defensive. But can't it—you know, can't you interpret consortium this way. It was like can't you interpret—I mean, can't you interpret the—something a certain way.

• • •

Q. And—and that—that statement, that—that—that a claim of damage to sex life was just a small part of the case, is an acknowledgment that it's a part of the case, right?

> A. Let us—let us even concede for your purpose, that if a media could interpret it as a small part of a case, you are not permitted under libel laws, to say that it has destroyed their sexual relations. You are not permitted to distort the Complaint in such a way. You are not permitted to do what was done here, which is libel.

(App. 522a-530a)

The existence of malice is almost always a fact question and not a question of how to be decided on summary judgment. *Schwartz v. American Medical Association*, 23 F. Supp.2d 1271 (D.N.M. 1998); *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991); *Schiavone Const. Co. v. Time, Inc.*, 847 F.2d 1069 (3d Cir. 1988); *Tucker, et al. v. Philadelphia Daily News*, 757 A.2d 938 (Pa. Super. 2000).

II. The Panel Fails To Mention, Let Alone Distinguish, *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991); *Schiavone Const. Co. v. Time, Inc.*, 847 F.2d 1069 (3d Cir. 1988); *Tucker v. Philadelphia Daily News, et al.*, 757 A.2d 938 (Pa. Super. 2000); *Merriweather v. Philadelphia Newspapers, Inc.*, 453 Pa. Super. 464, 684 A.2d 137 (1996); *Savitsky v. Shenandoah Valley Pub. Corp.*, 389 Pa. Super. 176, 566 A.2d 901, 903 (1989)

Tuckers' appellate brief relied heavily upon *Masson*, *Schiavone*, *Merriweather*, and *Savitsky*, *supra*, to reverse the trial court's grant of summary judgment.

> The constitutional question we must consider here is whether, in the framework of a summary judgment motion, the evidence suffices to show that respondents acted with the requisite knowledge of falsity or reckless disregard as to truth or falsity. This inquiry in turn requires us to consider the concept of falsity; for we cannot discuss the standards for knowledge or reckless disregard without some understanding of the acts required for liability. We must consider whether the

> requisite falsity inheres in the attribution of words to the petitioner which he did not speak.

Masson, 501 U.S. at 513.

The Supreme Court in *Masson* proceeded point by point through alleged *mischaracterization* as to what was allegedly said and concluded time and time again:

> This difference is material, a jury might find it defamatory, and, for the reasons we have given, *there is evidence* to support a finding of deliberate or reckless falsification. (emphasis supplied)

Masson, 501 U.S. at 525.

The Court's *attention* is directed to the Superior Court's opinion in *Tucker v. Philadelphia News, et al.*, 757 A.2d 938 (Pa. Super. 2000) which addresses the identical issues presented to the Third Circuit. The Court's attention is also directed to the opinion in *Merriweather v. Philadelphia Newspapers, Inc.*, 453 Pa. Super. 464, 684 A.2d 137, 141 (1996):

> [8, 9] For the following reasons, we find that Appellant has raised a genuine issue of material fact, sufficient to survive Appellees' motion for summary judgment. Appellant alleges that Appellees fabricated an accusation that he "fixed" the Massey trial, "(1) which accusation is neither in the criminal charge, (2) nor a reasonable interpretation of the criminal charge, (3) nor in any of the materials on which the newspaper defendants relied in writing the article, (4) but is instead contradicted by the source materials[.]" Appellant's Brief, at p. 10. To support these allegations, Appellant argues that the inaccuracy of the headline, the implications of the headline and article together, as well as the Appellees' failure to identify the headline writer, raises a genuine issue of material fact as to whether Appellees published the article with actual malice. We agree.

Merriweather, *supra* at 472-473, 684 A.2d at 140-141. *Also see*, *Savitsky v. Shenandoah Valley Publishing Corp.*, 389 Pa. Super. 176, 566 A.2d 901 (1989):

> Viewed in light of these decisions, the facts of the case sub judice lead this Court inexorably to the conclusion the actions of the newspaper and O'Brien exhibited recklessness such as a jury might reasonably find to constitute actual malice.

Savitsky, supra at 180, 566 A.2d at 903.

The Third Circuit's opinion in *Schiavone* summarizes the applicable law and reaches the same conclusion as Your Court in *Masson* and the Superior Court in *Tucker*, *Merriweather*, and *Savitsky*. *See*, *"VII. Malice", 847 F.2d 1069, at 1089-1093. Also see*, the Supreme Court of Pennsylvania's opinion in *Ertel v. The Patriot-News Co.*, 544 Pa. 93, 99, 674 A.2d 1038, 1041 (1996) and *Curran v. Philadelphia Newspapers, Inc.*, 497 Pa. 163, 439 A.2d 652 (1981). *Also see*, *Eastwood v. National Enquirer, Inc.*, 123 F.3d 1249 (9th Cir. 1997); *Wells v. Liddy*, 186 F.3d 505 (4th Cir. 1999); *Celle v. Filipino Reporter Enterprises, Inc.*, 209 F.3d 163 (2nd Cir. 2000); *Church of Scientology International v. Behar*, 238 F.3d 168 (2nd Cir. (N.Y.) 2001); *Milsap v. Journal/Sentinel, Inc.*, 100 F.3d 1265 (7th Cir. 1996); *Kaelin v. Globe Communications Corp.*, 162 F.3d 1036 (9th Cir. 1998); *Johnson v. The Black Chronicle, Inc., et al.*, 964 P.2d 924 (Okla. Civ. App. Div. 4 1998); *Beal v. Bangor Pub. Co.*, 714 A.2d 805 (S. Ct. Maine 1998); *Snitowsky v. NBC Subsidiary, Inc.*, 297 Ill.App.3d 304, 696 N.E.2d 761 (1998); *Abdelsayed v. Narumanchi*, 39 Conn.App. 778, 668 A.2d 378 (1995); *Hinerman v. The Daily Gazette Co., Inc.*, 188 W. Va. 157, 423 S.E.2d 560 (1992); *McKimm v. Ohio Elections Comm.*, 89 Ohio St.3d 139, 729 N.E.2d 364 (2000); *Gaylord Broadcasting Co. v. Francis*, 7 S.W.3d 279 (Tex. App. 1999); *Bunton v. Bentley*, 1999 WL 967686 (Tex. App. 1999) and *Burnett v. National Enquirer, Inc.*, 144 Cal.App.3d 991, 193 Cal. Rptr. 206 (1983).

Although no case is entirely precedential, the facts and circumstances of *Masson* are as close as one could ever expect to find. Mr. Masson alleged that *The New Yorker* magazine mischaracterized what he said. The Tuckers alleged that *Time* and *Newsweek* mischaracterized their 1997 Complaint, News Release and what Angino said to Roberts. Neither Mr. or Mrs. Tucker nor their attorney said that

lewd lyrics destroyed the Tuckers' lives or that they were not able to have sex and consortium cannot be logically equated with destroyed sex life.

III. The Panel Must, But Did Not, Follow The Law Of Pennsylvania In This Diversity Action

---

In the companion case of *Tucker v. Philadelphia Daily News*, 757 A.2d 938 (Pa. Super. 2000), the Superior Court reversed the trial court's grant of Preliminary Objections. The Superior Court denied Philadelphia Daily News' request for reconsideration. Although a Petition for Allowance of Appeal has been filed to the Pennsylvania Supreme Court, the Third Circuit was required to follow the Superior Court in this diversity action.

IV. Although The Definition Of Consortium Can Include Sex, A Jury May Find That Newsweek And Time Published Stories With A Reckless Disregard For The Truth By Reporting A Claim For Loss Of Sex Was Made By *Mrs.* Tucker And Going Further To Allege That *Mrs.* Tucker Wanted $10 Million Because *She* Could No Longer Have Sex With Her Husband Or That "Shakur's Album *All Eyez On Me* Caused Her [*Mrs.* Tucker] So Much Distress That *She* And Her Husband Have Not Been Able To Have Sex"

Although damage to one's sexual relations with one's spouse is included in the definition of "consortium," a "consortium" claim does not permit one to conclude that a claim for damaged sex life has been made. Otherwise, the media could defame everyone who broke a toe, had a whiplash, or a back sprain if there was a consortium claim, *e.g.*, Judge Alioto has not been able to have sex since he broke his toe in a rear-end collision. This example is actually less bizarre than *Time's* and *Newsweek's* reporting as news that lewd lyrics destroyed Mrs. Tucker's sex life.

18
Reasons for Allowance of the Writ

Every first-year student who took a Philosophy I course studied basic logic, including epistemology, philosophical logic, methodology, etc., *e.g.*, Grayling, *Philosophy I* (Oxford University Press 1999, 2000).

Elementary logic precludes taking a word like consortium that *may* include loss of sex, *assume that it does* include sex, *assume the loss is total*, *transpose* the husband's claim into the wife's claim, and *publish as "news"* Mrs. Tucker filed a suit for $10 million *because lewd lyrics destroyed her sex life*. At some point, the writer is recklessly *creating news* rather than responsibly or even negligently reporting facts, and is in fact recklessly reporting a manufactured, exaggerated, false product as news.

If someone says that something is bizarre or "most bizarre," as the Time news reporter did, saying that the moon is made of green cheese or saying that there are pink elephants or lewd lyrics destroyed someone's sex life, the reporter can be found by a jury to be reckless for publishing such bizarre facts as "news" without double checking or triple checking particularly if someone's reputation is at stake. Although the definition of human beings includes men and women, *Newsweek* and *Time* would be reckless by asserting as an historical fact that Socrates was a woman because he is a human being, women are included in the definition of human beings, and Fischbein told them that Socrates was a woman. Just the use of the word "bizarre" or "most bizarre" creates a factual issue as to recklessness.

By the time Time and Newsweek were publishing their articles, the Tucker Complaint was not "hot news." Fischbein was not an unbiased source, the story that two seventy-year-old people one who was leading a movement against sex in lyrics claimed that their sex life was destroyed by lewd lyrics was truly bizarre. The Tucker I Complaint did not use the word sex. Time and Newsweek had attorneys on staff who were consulted by the reporters, but Time and Newsweek on the basis of attorney/client privilege refused to permit depositions of their in-house corporate attorneys. Time and Newsweek reporters had preconceived stories to tell and ignored

what didn't fit. Time's reporter never contacted Tuckers' attorney and Newsweek's attorney ignored what he said.

Plaintiffs have engaged as experts two highly credentialed and respected journalists and teachers who have devoted their lifetimes to living, writing, and teaching the ethics of journalism. *See*, Wesley G. Pippert's CV and reports of September 16 and 29, 1998 (App. 411a-416a) and Deni Elliott's CV and reports of September 16, 1998, and October 4, 1998 (App. 417a- 432a).

Both of these experts were prepared to testify that Defendant Time Inc. and its editorial and legal staff published the "Shakur Booty" September 22, 1997, article and Newsweek's article "Grabbing At A Dead Star," September 1, 1997, with actual malice as interpreted by the Supreme Court and other courts by discussing and opining on Time's/Luscombe's, Newsweek's/Roberts' extreme failure to conform to journalistic ethics/standards.

If these facts cannot withstand a Motion for Summary Judgment, it is hard to conceive what facts would.

V. The Panel Should Have Considered That The Media In The 1990s Is Different Than The Media In 1776 When The First Amendment First Established Freedom Of Speech And Freedom Of The Press And Even Different Than The 1960s And The 1970s, The Era Of The Cases Referenced By The Third Circuit Panel

---

Today there are a few media giants that control what we see and read. Time Inc., a division of Time Warner, which just merged with AOL, is one of these giants. Time Warner was served with an Amended Complaint that said that Fischbein was lying. Time's reporter said she never received notice. Discovery was denied Plaintiffs. Plaintiffs' attorney could not depose Time's in-house attorneys who had responsibilities to review all articles and advise as to possible libelous content.

Public figures are at the mercy of mega media, and that media has the power to destroy public figures by mischaracterizations of fact that constitute nothing but mega media's fictional creation to sell advertising by filling the airways with sex, sleaze, and celebrities.

There are a number of publications, including Edwin Diamond, *The Media Show* (The MIT Press 1991) and David J. Krajicek, *Scooped* (Columbia Univ. Press 1998) that emphasize how newspapers and magazines, radio, television, cable, etc. have over the last ten to twenty years become mega corporations that attempt to sell *sex, sleaze, and celebrities*. Although the media purport to report "news," they fictionalize the facts for the purpose of selling their newspapers, magazines, radio, television, and books. One cannot turn on the TV and/or pick up a magazine or newspaper without reading stories about sex, sleaze and celebrities. Carol Burnett and Clint Eastwood, as well as many other celebrities have had to sue the media for false reporting. *See*, *Eastwood v. National Enquirer, Inc.*, 123 F.3d 1249 (9th Cir. 1997) and *Burnett v. National Enquirer, Inc.*, 144 Cal.App.3d 991, 193 Cal. Rptr. 206 (1983). Our TV shows are sex and the law, sex and medicine, sex and violence, sex and sex. Although sex, sleaze and celebrities sell, one cannot deliberately change facts and call fiction "news" and not permit a jury to find "malice." Are Time and Newsweek to be held to a lower standard than the National Enquirer?

Plaintiffs' Complaint involved celebrities, Mrs. Tucker and Tupac Shakur. It needed sex and sleaze, however, to sell. Defendants provided the sex and sleaze even though the Complaint and the News Release did not. Certainly a jury could find that their actions were at least reckless if not downright false.

The 1990s and the year 2000 have witnessed a number of articles critical of and questioning the appropriateness of *Sullivan* and its progeny in the changed world of the 1990s and the new millennium. Jonathan Garret Erwin, *Can Deterrence Play A Positive Role In Defamation Law?*, 19 Rev. Litigation 675 (Univ. Texas Law School Publ. Summer 2000); Michael W. Richards, *Tort Vision for the New Millennium: Strengthening News Industry Standards As A*

Defense Tool In Law Suits Over Newsgathering Techniques; 10 Fordham Intellectual Property Media and Entertainment L.J. 501 (Winter 2000); Marc E. Sorini, *Factual Malice: Rediscovering the Seventh Amendment In Public Person Libel Cases*, 82 Geo. L.J. 563 (1993); Edward T. Fenno, *Public Figure Libel: The Premium On Ignorance And The Race To The Bottom*, 4 S. Cal. Interdisciplinary L.J. 253 (Winter 1995); David A. Logan, *All Monica, All of the Time: The 24-Hour News Cycle and the Proof of Culpability In Libel Actions*, 23 Univ. Arkansas, Little Rock L.R. 201 (Fall 2000).

Ideally, the law of defamation would be able to achieve two goals simultaneously. First, the law would deter the citizenry, including the press, from communicating all unprivileged, false, defamatory speech. Because perfect deterrence is impossible, the law would also provide a remedy that could cure a wounded reputation if deterrence failed to prevent harm from the outset. Second, the law would allow free speech to flourish and public debate to rage unfettered. Beneficial speech would be fully encouraged. A balance between these two goals is, essentially, what jurists have attempted to achieve with defamation laws.

A balancing of the two goals is required because an analysis will reveal that they are, in some fundamental ways, diametrically opposed. Because the two goals are in opposition, particularly with regard to deterrence and free speech, one goal must either cancel out the other, or compromises must be made between them. In *New York Times Co. v. Sullivan*, the United States Supreme Court decided that the balance of defamation law should tilt markedly towards promoting free speech and away from deterrence. Though it was ostensibly striving to protect reputation, the Sullivan Court's new constitutional regime was primarily designed to prevent the chilling of speech and to protect "uninhibited, robust, and wide-open" debate on public issues. Unfortunately, its new balancing test left injured plaintiffs without acceptable remedial protection. The Court was so concerned about preventing chilling of

speech that it created a regime that neither sufficiently deters speech nor provides vindication for those with damaged reputations. Ironically, the regime does not even fully protect legitimate speech.

Erwin, *Can Deterrence Play a Positive Role in Defamation Law?*, *supra*, pp. 676, 677.

Our current defamation law has rightfully been compared to a lottery. Like players of the lottery, libel plaintiffs almost never win, but when they do, they win big. The reason for this strange result in libel litigation is not that plaintiffs' reputations are harmed any less now than they were before Sullivan. On the contrary, in this day and age, when the public is constantly and overwhelmingly bombarded with information, it would not be far-fetched to suggest that more people are victimized by tortious speech now than ever before. The reason why libel law functions like a lottery is that, after Sullivan, even though the remedy for defamation is "largely illusory," juries are more willing than ever to award victims of defamation enormous judgments. Libel law looks even more like a lottery when empirical data is analyzed. Close to 70% of libel cases brought against the press (where the Sullivan rules apply) end with a defendant's motion for summary judgment. Of those suits that survive and go on to judgment, only an estimated 5% to 10% of those judgments are upheld. Appellate courts overturn the vast majority of judgments because of insufficient proof of malice. Those few judgments that are upheld do tend to be large, however. For example, the average total award for plaintiffs bringing defamation suits in 1992-1993 exceeded $1 million. Despite the large judgments, plaintiffs, especially those unfortunate enough to be classified as public figures, are certainly worse off than they were before the common law became engulfed by constitutional requirements. As this Note's discussion of the elements of modern defamation law has demonstrated, much of the plaintiffs' plight is by design. The summary judgment victories are, for the most

> part, the result of the Court's decision in Liberty Lobby to force public figures and private persons seeking presumed damages to provide enough evidence to prove actual malice clearly and convincingly. Plaintiffs' inability to succeed in the appellate courts can legitimately be blamed on the fact that they have the burden of proving falsity and because, as will be discussed below, most of them have to prove actually [sic] malice clearly and convincingly to recover. The Supreme Court has, in sum, cobbled together an intricate matrix of rules that makes it close to impossible for plaintiffs to recover. When there is success, it is great, but that is little comfort to the 90% that fail. That 90% may be left with a still-damaged reputation (depending on the merits of their case from the outset) and possibly crippling legal fees.

Erwin, *supra*, pp. 692-694.

> In sum, because of the changes of defamation law, plaintiffs are, for the most part, denied redress for harm to their reputations. At the same time, there is less deterrence against defamation because of plaintiffs' inability to recover. What we are left with, therefore, is a constitutional defamation law that encourages the press to defame and that does not compensate the victims of unprivileged, defamatory falsehoods.

Erwin, *supra*, pp. 695-696.

> If cynicism has infected contemporary journalists, then it appears the public has responded with cynicism of its own—apparently viewing the news media, as an institution, with a more jaundiced eye. Survey data from a leading media research think thank, [sic] The Pew Center for the People & The Press, in 1997, found the American public "more critical of press practices, less enthusiastic about the news product and less appreciative of the watchdog role played by the news media than it was a dozen years ago." Empirically, The Pew Center survey found that in 1985, a solid majority polled believes news organizations were accurate. A dozen years later, a similar majority believed they did not "get the facts straight." An even

> more solid majority believed the new media unnecessarily invaded people's lives—even when it was not in the public interest to do so. The Supreme Court's majority has paid homage to "the press as a watchdog of government activity," insofar as "the basis [sic] assumption of our political system that the press will often serve as an important restraint on government" and a "check on government abuse." But three decades since that judicial tribute, these survey date [sic] indicate that the public now sees the news media less as a watchdog and, perhaps, more as attack dog.

Richards, *Tort Vision for the New Millennium*, *supra*, pp. 501, 502.

> The protection of the right to jury trial in civil cases is a crucial freedom secured by the Seventh Amendment of the Bill of Rights. The omission of this right figured prominently in the struggle to include a Bill of Rights in the Constitution. Before the 1960s, the Seventh Amendment was one of the constitutional safeguards most aggressively enforced by the Supreme Court. However, the vitality of the Seventh Amendment is increasingly threatened by federal courts engaging in judicial factfinding. Nowhere is this trend more striking than the application of de novo review in public person libel cases.
>
> This note argues that by engaging in extensive factual review, the Supreme Court is violating the Seventh Amendment in letter and spirit, and is encouraging or even requiring lower federal courts to do so as well. The Framers of the Seventh Amendment intended to prevent judicial overreaching by the newly created federal judiciary. With this concern in mind, they set out to guarantee that "no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."
>
> However, since the Supreme Court's decision in *New York Times Co. v. Sullivan*, the command of the Seventh Amendment has been routinely ignored in public person libel cases. In the name of First Amendment freedom of the press, Sullivan and its progeny have made illusory the right to a lay

> jury fact finder. Today, with a reversal rate of seventy-one percent in Sullivan "actual malice" cases, it appears that the Framers' fear of judicial overreaching has come to pass. In public person libel cases, media defendants today can rely on an unelected elite to review verdicts de novo and make findings that are considerably more prodefendant than those made by juries who are representatives of the population at large.

Sorini, *Factual Malice*, *supra*, pp. 563, 564.

Present day public figure libel law is "a failure." It is a failure because it gives too much protection to grossly irresponsible publishers of false statements of fact, while providing too little protection for victims of libel, consumers of information, and publishers who carefully investigate the truth of their factual statements prior to publication.

The primary cause of this failure in the United States Supreme Court's present emphasis on the subjective beliefs of defendant publishers in the Court's "actual malice" standard. This emphasis on the publisher's subjective belief creates two problems. First, it places a "premium on ignorance," encouraging publishers not to investigate the truth of their statements before publication. Second, it assigns too low a value to the reputation of victims of libelous statements. This disincentive to investigate and undervaluation of reputation in turn encourages a "race to the bottom," in which publishers carelessly rush to print outrageous stories about public figures in an effort to "scoop" other publishers and earn money or benefits from the shock of their publications.

Since many of these poorly-substantiated publications turn out to be untrue, this "race" leads to three important harms to society. First, large numbers of innocent persons are horribly libeled with no chance at either financial compensation or a re-establishment of their reputation. Second, the marketplace of ideas becomes so diluted with factually false information that consumers of information don't know what to believe. Third, publishers who carefully investigate the truth

of their information cannot compete financially with the careless publishers of false information.

• • •

As the cases in Part II might indicate, the Supreme Court accomplished its goal of "uninhibited, robust, and wide-open" debate by turning to the actual malice standard in *New York Times v. Sullivan*. At present, empirical evidence suggests that publishers rarely, if ever, censor themselves for "fear of large verdicts in damage suits for innocent or mere negligent misstatement," or even for "fear of the expense involved in their defense." In fact, in their recent article in the Louisiana Law Review, Professors Russell L. Weaver and Geoffrey Bennett quote one prominent news publisher as having no fear whatsoever of defamation liability.

Fenno, *Public Figure Libel*, *supra*, pp. 254, 264.

As noted in Part A, the actual malice standard falls short because it gives too much "breathing space" to publishers. In an attempt to prevent censorship of "valuable speech" (opinions, as well as true statements of fact) the actual malice standard has afforded publishers protection even when they carelessly publish false statements of fact.

• • •

The actual malice standard's emphasis on the publisher's subjective belief of the truth or falsity of his publication in essence places a "premium on [the publisher's] ignorance."

Fenno, *supra*, p. 266.

The second failure of the actual malice standard is that it undervalues a person's interest in his reputation. As the Supreme Court said, "the legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted upon them by defamatory falsehood."

• • •

Reputation, "is not some lifeless abstraction, but the summation of all the possibilities for gainful interactions—economic, social, and political." This summation can be easily stripped away by false accusations from the media or other widely published and believed sources. These false accusations can ruin a person's career or social life.

In addition, once the false accusations are made, there is practically no turning back.

• • •

While the argument that public figures need less protection because they can command media attention to counter criticism may be true for some very prominent people, even then it is the rare case where the denial overtakes the original charge.

Fenno, *supra*, p. 270.

At present, the law offers little such encouragement. Under actual malice, a reporter's good faith belief that his story is true is the only factor that the courts take into account in their imposition of liability. The fact that a public figure plaintiff proves that a publisher proceeded with a story "heedless of the consequences" to the plaintiff's reputation is irrelevant. Thus, under actual malice, a publisher need not weigh the cost of further investigation against the potential injury to the plaintiff's reputation to avoid liability. This means that the only time a public figure libel plaintiff's reputation is taken into account is in the "mark[ing] out" of the actual malice standard itself. Since the Supreme Court has created a standard which makes it so difficult for public figures to recover for defamation, it appears that the Court has ruled that the reputation of these people is worth very little indeed.

It has been argued that by running for public office or thrusting oneself into the forefront of public controversies (and thus becoming a public figure) a person assumes the risk of damage to his reputation, since he knows that his actions will

not be more frequently in the public spotlight. In his article, Is Libel Law Worth Reforming?, Professor Anderson has shown that this argument is "riddled with fallacies," three of which deserve mention here.

The first fallacy is that a person who is more frequently in the public spotlight must be left without a remedy for defamatory falsehoods. As Professor Anderson points out, "[l]ogic supports the opposite conclusion equally well: because the risk of close public scrutiny— and therefore defamation— is greater, the law should be more protective of the reputation interest."

The second fallacy is that all public figures became public figures by "thrusting" themselves into public controversies. In fact, many public figures would prefer to avoid public controversies altogether, but they cannot since their lives or careers are so interesting to the public that the public is drawn to them. Johnny Carson's wife, for instance, was held to be a public figure simply because she was married to Johnny. She did not choose to sacrifice reputation for power and influence. Rather, any power and influence she might have obtained was simply derived from her successful (or unsuccessful) marriage to Johnny.

The third fallacy stems from the fact that the assumption of risk argument is circular. "If those who seek public office or seek to influence the outcome of public controversies waive some portion of reputational protection by doing so, it is only because the law says so. It cannot explain why the law says so." As noted above, "[p]ublic figures do not choose to forego remedies for defamation. True, they may know that they are more likely to be discussed and hence to be defamed, but ... that need not weaken their claim to the law's protection."

Thus, the actual malice standard does not adequately protect the reputations of public persons, since a publisher presently does not have to weigh the cost of further investiga-

tion against the potential injury to the plaintiff's reputation to avoid liability.

Fenno, *supra*, pp. 271-272.

One major purpose of the First Amendment is to provide a "marketplace of ideas" from which people can draw in order to make decision about their lives and their government. Under the actual malice standard, however, too many false statements of fact are allowed to enter the marketplace of ideas. This is because publishers have no incentive to investigate the truth of their factual statements before publishing. In fact, as noted above, publishers often have a strong financial incentive to publish scandalous statements, whether they are true or not. These untrue statements pollute the marketplace by providing consumers with information that outwardly appears to be objectively true fact, but which in reality is just a false statement based on the publisher's unverified belief or opinion.

Fenno, *supra*, p. 273.

The publication of these false statements of fact, without corresponding labels indicating that the information is merely "opinion," "editorial," or "news analysis," injures the consumer of the information in two ways. First, he is injured when he makes some decision in his life in reliance on these false facts.

• • •

The consumer's second injury comes when he learns that the information on which he relied was false. He is injured because he no longer knows what information to take as fact and what information to receive with skepticism.

• • •

Since the consumer cannot spend the time to investigate all the statements of fact he receives to determine for himself whether they are actually true, he must be satisfied that he will never be able to obtain the true information he needs to run his life. This result injures the consumer because instead of

> re-establishing his faith in the marketplace it simply leaves him doubting everything he reads or hears.
>
> • • •
>
> Publishers who carefully investigate the truth of their statements of fact before publishing them are valuable to the marketplace of ideas because they provide information upon which consumers of information can wholeheartedly rely when deciding how best to run their lives. Present-day libel law fails to protect these publishers because it allows their competitors to gain a financial edge. This edge is gained when the competitors carelessly publish false statements of fact about public figures without being held liable for damages in defamation.

Fenno, *supra*, pp. 273-276.

VI. CONCLUSION

For all of the reasons indicated, Your Court should grant Plaintiffs' Petition.

Respectfully submitted
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PROOF OF SERVICE

I hereby certify that I, Richard C. Angino, Esquire, have this 15 day of May, 2001, served a true and correct copy of the foregoing PETITION FOR WRIT OF CERTIORARI upon counsel of record via postage pre-paid, first-class United States mail addressed as follows:

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5-15-01

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NO. 00-1714

In the Supreme Court of the United States

May Term 2001

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Petitioners

vs.

RICHARD FISCHBEIN; TIME, INC.; BELINDA LUSCOMBE; NEWSWEEK MAGAZINE, and JOHNNIE ROBERTS,

Respondents

APPENDIX

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Appendix

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

991139

C. DELORES TUCKER;
WILLIAM TUCKER, her husband

v.

RICHARD FISCHBEIN; BELINDA LUSCOMBE;
NEWSWEEK MAGAZINE; JOHNNIE L. ROBERTS;
TIME INC.

C. Delores Tucker;
William Tucker,
Appellants

SUR PETITION FOR REHEARING

Present: SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, BARRY, AMBRO, and FUENTES, *Circuit Judges*, and ROSENN, *Senior Circuit Judge*•

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated

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•As to panel rehearing only.

in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,
/s/Sloviter
Circuit Judge

DATED:14 FEB 2001

Appendix

Filed January 9, 2001

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 991139

C. DELORES TUCKER;
WILLIAM TUCKER, her husband

v.

RICHARD FISCHBEIN; BELINDA LUSCOMBE; NEWSWEEK MAGAZINE; JOHNNIE L. ROBERTS; TIME INC.

C. Delores Tucker;
William Tucker,
Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

(D.C. No. 97-cv-06150)
District Judge: Honorable Ronald L. Buckwalter

Argued October 1, 1999

BEFORE: NYGAARD, ALITO, and ROSENN, *Circuit Judges*.

(Filed: January 9, 2001)

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Appendix

OPINION OF THE COURT

ALITO, Circuit Judge:

This case marks the third round of litigation between C. Delores Tucker, a former state official and a community leader, and the record companies and performers responsible for what is known as "gangsta rap."[1] Since 1993, C. Delores Tucker has crusaded against gangstarap lyrics, which, she asserts, "grossly malign black women, degrade the unthinking young black artists who create [gansta rap], pander pornography to our innocent young children, hold black people universally up to ridicule and contempt, and corrupt its vast audience of listeners, white and black, throughout the world." App. at 2322. Mrs. Tucker has taken her message to shareholder meetings of major corporations to pressure them to divest their holdings in record companies that produce gangsta rap; she has also addressed Congress to urge that steps be taken to "curb and control the proliferation of vile, demeaning pornographic and misogynistic music." *Id.*

Mrs. Tucker's efforts caught the attention of the rap industry, and in August 1995, Interscope Records, Inc., filed suit against her in the United States District Court for the Central District of California *(Tucker I)*, alleging that she had induced a breach of contract between Death Row Records, Inc., and Interscope. Interscope and Death Row voluntarily withdrew that suit. Then, in July

1. "Gansta rap" has been described as "a form of hip hop music that became the genre's dominant style in the 1990s, a reflection and product of the often violent lifestyle of American inner cities afflicted with poverty and the dangers of drug use and drug dealing. The romanticization of the outlaw at the centre of much of gangsta rap appealed to rebellious suburbanites as well as to those who had firsthand experience of the the harsh realities of the ghetto. Encyclopedia Britannica, "Gangsta Rap" <http://www.britannica.com/bcom/eb/article/3/0,5716,128693+1,00.html.> Prominent gangsta rap groups are described as "present[ing] tales of gangs and violence," "offer[ing] hard-hitting depictions of crack-cocaine related crime," and featuring "a marriage of languid beats and murderous gang mentality." *Id.*

1997, Mrs. Tucker and her husband, William Tucker, filed a complaint in the United States District Court for the Eastern District of Pennsylvania *(Tucker II)*, alleging that the lyrics in two songs by deceased rapper Tupac Shakur on an album called *All Eyez On Me* had attacked Mrs. Tucker using "sexually explicit messages, offensively coarse language and lewd and indecent words" and that she had received death threats because of her activities. Named as defendants were Shakur's estate; Interscope, which had produced Shakur's album; and four other companies, including TimeWarner, Inc., which allegedly maintained a financial interest in Interscope. Asserting claims for intentional infliction of emotional distress, slander, and invasion of privacy, Mrs. Tucker sought damages for medical expenses and mental injury. In paragraph 50, the Complaint alleged that her "husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and *consortium*" Tucker II Compl. ¶ 50 (emphasis added), App. at 23. Loss of consortium means loss by one spouse of "whatever of aid, assistance, comfort, and society [one spouse] would be expected to render or to bestow upon [the other]." *Hopkins v. Blanco*, 302 A.2d 855, 856 (Pa. Super. 1973), *aff'd*, 320 A.2d 139 (Pa. 1974). Loss of consortium includes, but is not limited to, "impairment of capacity for sexual intercourse." *Restatement (Second) of Torts* § 693(1) (1977); *see also* W. Page Keeton, *Prosser and Keeton on* Torts 931 (5th ed. 1984).

The filing of the Tuckers' lawsuit spawned numerous articles that focused on the "loss of consortium" claim. Among them was an article printed by the *Philadelphia Daily News* on August 2, 1997, in which the lawyer representing Shakur's estate, Richard Fischbein, was quoted as saying: "[I]t is hard for me to conceive how these lyrics could destroy her sex life . . . but we can only wait for the proof to be revealed in court." App. at 30. Following the *Philadelphia Daily News* article, wire and news services throughout the country picked up the story, and many of them quoted or paraphrased Fischbein's comment interpreting the Tuckers' claim as seeking compensation for damage to their sex life.

On August 20, 1997, *Newsweek* reporter Johnnie L. Roberts telephoned the Tuckers' attorney, Richard C. Angino, regarding an

upcoming *Newsweek* story about the lawsuit. According to Angino, he informed Roberts that, although loss of consortium could mean loss of sex in some cases, it did not mean that in this case. *See* App. at 645. Roberts disputes Angino's account of this conversation.

On August 26, 1997, Roberts interviewed Fischbein in connection with the story. Roberts's notes show that Fischbein told him that one of the claims in the Tuckers' complaint involved interference with sexual relations. In addition to speaking with Fischbein and Angino, Roberts read the complaint and looked up the definition of consortium before writing his article. On September 1, 1997, *Newsweek* printed an article written by Roberts and entitled "Grabbing at a Dead Star." The article stated: "Even C. Delores Tucker, the gangsta rap foe, wants a chunk [of Tupac Shakur's estate]. She and her husband claim that a lyrical attack by Tupac iced their sex life." App. at 90. Although the article did not mention the conversation between Roberts and Angino, it did quote Fischbein as commenting as follows regarding the loss-of-consortium claim: "I can't wait to hear the testimony on that subject." *Id.*

The next day, the Tuckers filed an amended complaint in *Tucker II* (the "First Amended Complaint"), which included an additional claim against Fischbein for making "false and misleading statements regarding the claim herein, through published statements that C. Delores Tucker filed suit because of a 'loss of her sex life.' " App. at 1711. The amended complaint was served on Fischbein and the other defendants, including TimeWarner, Inc.

On September 12, after he was served with the First Amended Complaint, Fischbein gave an interview to *Time* reporter Belinda Luscombe concerning the Tuckers' case. Luscombe stated in deposition that Fischbein had told her that "this was a lawsuit about emotional distress and one of the things affected were [sic] her sexual relationship with her husband." *See* App. at 2197. *Time* printed Luscombe's article, entitled "Shakur Booty," on September 15, 1997. *See* App. at 34. Although the article did not quote Fischbein, Luscombe admitted in her deposition that she based the article solely on her interview with Fischbein and on other articles,

most of which appear to be derived from Fischbein's initial comments to the press in early August.

On October 1, 1997, the Tuckers filed the complaint that is the subject of this action *(Tucker III)*. The complaint alleges that Fischbein, Time, Inc. ("Time"), and Newsweek, Inc. ("Newsweek") defamed the Tuckers by characterizing their loss of consortium claim in Tucker II as a claim for loss of sexual relations. Specifically, the Tuckers maintain that Mrs. Tucker's reputation as a moral leader was compromised when Time and Newsweek printed Fischbein's characterization of her suit as one to recover for the lyrics' effect on her sex life.

Time, Newsweek, and Fischbein each moved for summary judgment, and the District Court granted their motions, holding that the statements in question were not capable of a defamatory meaning and, alternatively, that the Tuckers, who conceded that they were "public figures," could not adequately prove that the defendants acted with "actual malice." Although the defendants had also contended that the Tuckers could not prove that the statements were false, the Court made no explicit holding on that question. This appeal followed.

I.

"[A]lthough a defamation suit has profound First Amendment implications, it is fundamentally a state cause of action." *McDowell v. Paiewonsky*, 769 F.2d 942, 945 (3d Cir. 1985). In this appeal, our first duty is to resolve a question of state law, *i.e.*, whether the Tuckers adduced sufficient evidence to show that the statements in question were defamatory under Pennsylvania law. If the plaintiffs satisfied that burden, we must then determine if the First Amendment precludes recovery. *See Steaks Unlimited, Inc. v. Deaner*, 623 F.2d 264, 270 (3d Cir. 1980).

Under Pennsylvania law, a defamation plaintiff bears the burden to show:

> (1) The defamatory character of the communication.
>
> (2) Its publication by the defendant.

(3) Its application to the plaintiff.

(4) The understanding by the recipient of its defamatory meaning.

(5) The understanding by the recipient of it as intended to be applied to the plaintiff.

42 Pa. Cons. Stat. Ann. § 8343(a) (1998). Under Pennsylvania law, the court must decide at the outset whether a statement is capable of defamatory meaning. *See Thomas Merton Ctr. v. Rockwell Int'l Corp.*, 442 A.2d 213, 215-16 (Pa. 1981). If the court determines that the statement is capable of a defamatory meaning, the jury must then decide whether the recipient actually understood the statement to be defamatory. *See Corabi v. Curtis Publ'g Co.*, 273 A.2d 899, 904 (Pa. 1971).

A statement is defamatory if "it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.* (citing *Birl v. Philadelphia Elec. Co.*, 167 A.2d 472, 476 (Pa. 1960)). *Accord Restatement (Second) of Torts § 559.* A court must examine the meaning of the allegedly defamatory statement in context, *see Beckman v. Dunn*, 419 A.2d 583, 586 (Pa. Super. 1981), and must evaluate "the effect [it] is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate." *Corabi*, 273 A.2d at 907. While it is not enough that a statement is embarrassing or annoying, *see Bogash v. Elkins*, 176 A.2d 677, 678 (Pa. 1962), a court should not dismiss a complaint unless it is "clear that the publication is incapable of a defamatory meaning." *Vitteck v. Washington Broad. Co.*, 389 A. 2d 1197, 1200-01 (Pa. Super. 1978).

The statements at issue here were the following:

(1) The statement in *Time's* September 22, 1997, article, "Shakur Booty," that *"[t]he prize for the most bizarre suit . . . goes to anti-rap warrior C. Delores Tucker, who claims that remarks made about her on Shakur's Album All Eyez on Me*

caused her so much distress that she and her husband have not been able to have sex. She wants $10 million." App. at 1634.

(2) The statement in *Newsweek's* September 1, 1997, article, "Grabbing at a Dead Star," that *"[Mrs. Tucker] and her husband claim that a lyrical attack by Tupac iced their sex life."* App. at 90.

(3) Fischbein's comment, quoted in an August 2, 1997, *Philadelphia Daily News* article, that *"[i]t's hard for me to conceive how these lyrics could destroy her sex life . . . but we can only wait for the proof to be revealed at trial."* App. at 29.

(4) Fischbein's August 20, 1997, statement to *Newsweek* columnist Johnnie L. Roberts that Mrs. Tucker was bringing suit, in part, to recover for damage to her sex life, and his statement, quoted in the *Newsweek* article, that *"I can't wait to hear her testimony on that subject."* App. at 31.

(5) Fischbein's statement to Belinda Luscombe of *Time* that Tucker II *"was brought for emotional distress and that part of that was that . . her sexual relationship with her husband was affected."* App. at 2197.

The District Court held that none of these statements could have a defamatory meaning. The Court concluded that, although the statements might be annoying or embarrassing, they could not support a cause of action for defamation. The Court stated: "There is a vast difference between being annoyed and/or embarrassed on the one hand, and being disgraced and ridiculed to the extent that one's reputation is harmed and lowered in the estimation of the community, on the other." Dist. Ct. Op. at 6.

We cannot agree with the District Court's analysis. Statements considerably milder than or comparable to those at issue here have been held by the Pennsylvania Supreme Court to be capable of a defamatory meaning. For example, in Birl v. *Philadelphia. Elec. Co.*, 167 A. 2d 472 (Pa. 1960), the Pennsylvania Supreme Court held that a statement that an employee quit without notice was capable of a

defamatory meaning because recipients could conclude that the employee lacked honor and integrity "and was not a person to be relied upon insofar as his business dealings were concerned." *Id.* at 476. In *Cosgrove Studio & Camera Shop v. Pane*, 182 A.2d 751 (Pa. 1962), the Pennsylvania Supreme Court held that an advertisement was capable of a defamatory meaning because it implied that a competitor had bad business practices and might lead a recipient to question the competitor's integrity. *Id.* at 754.

Reading the statements at issue in this case in context and looking at the impression that they were likely to engender in the minds of the average reader, we conclude that each is capable of a defamatory meaning. Mrs. Tucker has led a campaign against the immorality of gangsta rap and those who profit from it. The statements made by the defendants—to the effect that Mrs. Tucker and her husband brought a $10 million lawsuit because Shakur's lyrics damaged their sex life—carry numerous disparaging implications. Because of the inherent implausibility of the idea that lyrics alone could cause millions of dollars of damage to a couple's sexual relationship, the statements were capable of making the Tuckers look insincere, excessively litigious, avaricious, and perhaps unstable. Furthermore, the statements tended to suggest that the Tuckers are hypocritical, that after condemning the gangsta rap industry for profiting from pornography, the Tuckers were only too willing to open up their own sex life for public inspection in order to reap a pecuniary gain. In the more colloquial language used by the defendants themselves, the statements suggested that the Tuckers were "[g]rabbing [a]t a [d]ead [s]tar['s]" "[b]ooty" and were willing to take the witness stand at trial and publicly provide the testimony about their sex lives that Fischbein "[couldn't] wait to hear." Such statements were capable of lowering the Tuckers' reputation in the eyes of the community and of causing others to avoid associating with them.

It is worth noting that, not only were the defendants' statements capable of a defamatory meaning, but the Tuckers adduced evidence that their reputations were in fact adversely affected. *See* 42 Pa. Cons. Stat. Ann. § 8343(a)(4) (requiring plaintiff to prove that

the recipient understood the statement as defamatory). In a *Philadelphia Daily News* article dated August 6, 1997, the author stated: "I also appreciate how some people felt betrayed when she filed a $10 million suit that has trivialized her and her movement. For a week now, even some of her most consistent supporters have been questioning her motives and snickering over the suit's allegation that her sex life has been ruined by a couple of Tupac Shakur raps." App. at 2143. An August 17, 1997, *Chicago Sun-Times* article noted: "[I]n my eyes Tucker has suffered a self-inflicted blow to her credibility. . . . Seems to me the real humiliation comes when a woman who has fought hard against gangsta rap makes the very personal and embarrassing claim that a couple of those very songs ruined her love life." App. at 265-66.

In short, the District Court erred when it held that the defendants' statements were not capable of a defamatory meaning under Pennsylvania law. The statements had the tendency to lower the Tuckers in the estimation of the community and to deter third persons from associating with them. We must therefore examine whether the First Amendment poses a bar to the Tuckers' claim.

II.

When a public official or public figure sues for defamation, the First Amendment demands that the plaintiff prove both that the statement was false and that it was made with "actual malice." *Hustler Magazine v. Falwell*, 485 U.S. 46, 52 (1988) (emphasis in original omitted); *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 162-65 (1967) (Warren, C.J., concurring) (applying the *New York Times* standard to public figures); *U.S. Healthcare v. Blue Cross of Greater Philadelphia*, 898 F.2d 914, 931 (3d Cir. 1990).

A. Actual malice

Under *New York Times v. Sullivan* and its progeny, actual malice means "knowledge that [the statement] was false or . . . reckless disregard of whether it was false or not." *New York Times*,

376 U.S. at 279-80. A public figure must adduce "sufficient evidence to permit the conclusion that the defendant entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1967). "[A] court ruling on a motion for summary judgment must be guided by the *New York Times 'clear and convincing' evidentiary standard in determining whether a genuine issue of actual malice exists—that is, whether the evidence presented is such that a reasonable jury might find that actual malice has been shown with convincing clarity.*" *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986).

1. Fischbein

The Tuckers assert two grounds for holding that Fischbein acted with actual malice. First, the Tuckers argue that Fischbein, as a lawyer, should have known that a claim for loss of consortium may not have anything to do with damage to sexual relations. It follows, the Tuckers contend, that Fischbein was at least reckless when he told the press that Mrs. Tucker was trying to recover for injury to her sex life.

We reject this argument. A claim for loss of consortium *may* concern damage to sexual relations and, with respect to the period prior to the service of the Tuckers' First Amended Complaint, there is no evidence that Fischbein was informed that Mr. Tucker's consortium claim did not refer to damage to sexual relations. Nor is there evidence from which a jury could find that Fischbein entertained serious doubts about the truthfulness of his statements at any time before the filing of the First Amended Complaint. Consequently, the record is insufficient to show by clear and convincing evidence that Fischbein was guilty during this period of anything more than negligence in jumping to the conclusion that Mr. Tucker's loss-of-consortium claim related, at least in part, to sex. *See St. Amant*, 390 U.S. at 731; *Time, Inc. v. Pape*, 401 U.S. 279, 290 (1971) ("The deliberate choice of an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of 'malice' under *New York Times*."). The Tuckers point out that Fischbein, as the representative of Shakur's estate, had a motive for discrediting

Mrs. Tucker, but circumstantial evidence of Fischbein's motive alone cannot satisfy the actual malice standard.

The Tuckers' second argument regarding Fischbein, however, does have merit. As previously noted, on August 27, 1997, the Tuckers filed their First Amended Complaint, which added Fischbein as a defendant and sought millions of dollars in damages. The basis for adding Fischbein was set out in Paragraph 46, which averred that Fischbein had "made false and misleading statements regarding the claim herein, *through published statements that C. Delores Tucker filed suit because of a 'loss of her sex* life.' " App. at 1711-12 (emphasis added). It is undisputed that Fischbein was personally served with this complaint before his interview with *Time* magazine reporter Belinda Luscombe on September 12, 1997.[2] Nevertheless, according to Luscombe's deposition, Fischbein told her during this interview that the Tuckers were attempting to recover for damage to their sexual relationship.

Based on this sequence of events, we are convinced that a reasonable jury could find by clear and convincing evidence that, at least as of the date of the service of the First Amended Complaint, Fischbein had actual knowledge that the Tuckers were not seeking to recover for damage to their sexual relationship. Since the First Amended Complaint alleged that Fischbein had defamed the Tuckers by stating that they were attempting to recover for damage to their sexual relations, a reasonable jury could certainly conclude that an attorney who read the complaint would understand that the Tuckers were not going to attempt to recover for such damage. (Indeed, it would be hard to interpret the First Amended Complaint any other way.) Fischbein states that he did not read the First Amended Complaint before speaking to Luscombe, but a reasonable jury could believe that a person who is added as a defendant in a multi-million dollar lawsuit is very likely to read the complaint shortly after receiving it in order to see why he or she has been sued.

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2. This argument does not apply to any statements made by Fischbein prior to August 27, 1997, including the comments published by the *Philadelphia Daily News* and the August 26 interview with Roberts of *Newsweek*.

A reasonable jury could disbelieve Fischbein's story and find by clear and convincing evidence that Fischbein did read the First Amended Complaint before the interview. We must therefore reverse the judgment of the District Court insofar as it dismissed the Tuckers' claim against Fischbein with regard to the statements to Luscombe.

The dissent disagrees with our conclusion on this point because, in the dissent's view, "[t]he language of the Amended Complaint, in the context of the Tuckers' previous statements and actions, was insufficient to indicate a change in their attitude toward alleging a loss of sexual relations." Dissent at 24. But even if we agreed with the dissent's characterization of the Tuckers' prior statements,[3] the following stark facts remain: (a) the Amended Complaint added Fischbein as a defendant and was served upon him; (b) the Amended Complaint asserted that Fischbein had defamed the Tuckers by stating that "C. Delores Tucker filed suit because of a 'loss of her sex life' " (App. at 1711-12); and (c) the Amended Complaint sought millions of dollars in damages. Surely a reasonable jury could find, by clear and convincing evidence, that Fischbein knew, after reading the Amended Complaint, that, whether or not the Tuckers had previously been seeking to recover for damage to their sexual relationship, they were no longer doing so.[4]

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3. The dissent seems at times to make findings of fact. For example, the dissent opines that "the statements made by the Tuckers and their attorney were deliberately cagey and equivocal so that they could, if they wished, introduce evidence of impotence and sexual disfunction at trial." Dissent at 22. This amounts to a finding of fact regarding the intent of the Tuckers and their attorney, and it is the province of the trier of fact, to make such a finding.

4. The dissent "find[s] it ironic that [we] believe[ ] there could be actual malice in a statement so similar to [the following statement] attributed to Mr. Tucker in *The Philadelphia Tribune*" (Dissent at 27):

> Pointedly asked how the lyrics could affect his sex life, he said, "That's just a brief reference [in the lawsuit]—a small part of it. We have to represent the situation as accurately as we can and the only way to experience it is to have it happen to you."

2. Roberts and Newsweek

The Tuckers' case against Roberts and Newsweek includes some evidence from which a reasonable jury could infer actual malice, but not the clear and convincing evidence needed to survive summary judgment. Accordingly, we must affirm the District Court's grant of summary judgment in favor of Roberts and Newsweek. Viewing the evidence in the light most favorable to the Tuckers, their attorney, Richard C. Angino, spoke with Roberts on August 20, 1997, six days before Roberts wrote "Grabbing at a Dead Star." According to Angino, he told Roberts in the course of this phone call that "consortium can mean, in some cases, sex. I said most of the time it doesn't and it doesn't in this case." Angino Dep., App. at 636.

Other statements in Angino's deposition severely weaken the Tuckers' position, however, and make it impossible for them to satisfy the clear and convincing standard. For instance, when asked exactly what he said to put Roberts on notice that the Tuckers' claim did not involve impairment of sexual relations, Angino replied: "I said only in the rarest of cases would you have a count that actually involves sex. I'm *under oath, so I cannot say to you that I said specifically, this case does not involve sex.*" App. at 431 (emphasis

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App. at 1631 (brackets in original).

At most, however, this statement may show Mr. Tucker's intent at the time of the article, in August 1997. It hardly establishes that the Tuckers were seeking to recover for damage to their sexual relations after they later filed the Amended Complaint.

Moreover, the dissent's interpretation of the statement attributed to Mr. Tucker in the article, while certainly reasonable, is not compelled. Without knowing the exact question posed by the reporter (and the question is merely paraphrased in the article), it is not possible to rule out the possibility that Mr. Tucker was simply referring to his claim for loss of consortium, which need not necessarily have pertained to sex. In other words, he may have said that *the loss of consortium claim* was "just a brief reference [in the lawsuit]—a small part of it." If evidence of this statement is admitted at trial, it will be for the trier of fact to interpret it.

added). Actual malice requires a plaintiff to establish that the defendant had a *subjective* belief that the statement was false when made, and Angino's equivocation about the exact words he used defeats any hope the Tuckers might have of proving actual malice on the part of Roberts or Newsweek by clear and convincing evidence. Therefore, we affirm the District Court's entry of summary judgment in favor of those parties.

3. Luscombe and Time

The Tuckers set forth 24 theories under which, they assert, it could be found that Belinda Luscombe and Time acted with actual malice in connection with the "Shakur Booty" article of September 15, 1997. Many of these theories are grounded on allegations of poor journalistic practices—*e.g.*, that Luscombe had a preconceived storyline; that she did not follow Time's editorial guidelines; that she failed to conduct a thorough investigation; and that she copied from other stories but changed their language without a factual basis. As the District Court found, these theories of actual malice are without support in the case law. While we will discuss only a few of these theories below, we have carefully considered and rejected all of them.

The Supreme Court has made clear that even an extreme departure from professional standards, without more, will not support a finding of actual malice. *See Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 665 (1989). Likewise, a failure to investigate, standing alone, does not constitute actual malice. *See St. Anant v. Thompson*, 390 U.S. at 730-31; *Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1089 (3d Cir. 1985).

The Tuckers assert that Luscombe avoided the truth by relying on biased sources while ignoring the Tuckers' news release, which explained the import of their Complaint. Although the Supreme Court has held that purposeful avoidance of the truth may support a claim of actual malice, the evidence here falls short. In *Harte-Hanks*, the Court held that there was sufficient evidence of actual malice where, among other things, a reporter failed to interview a

key witness to events being reported in a story, and the circumstances suggested that this was done for fear that the witnesses' statement might contradict the story the paper was committed to running. *See* 491 U.S. at 682-83. Likewise, in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), the Court found actual malice when the *Saturday Evening Post* failed to make adequate investigative efforts in the face of notification that the report they were about to print was false. *Id.* at 169-70. The element present in *Harte-Hanks* and *Butts* but lacking here is evidence from which a reasonable jury could infer that Luscombe doubted the veracity of her story. *See Harte-Hanks*, 491 U.S. at 692.

The Tuckers assert that the service of the First Amended Complaint on Time-Warner, Inc., the parent corporation of Time, Inc., which publishes *Time* magazine and employs Luscombe, should have put Luscombe on notice that the Tuckers did not seek recovery for injury to their sex life. This argument is far-fetched. Time-Warner, Inc., a huge media and entertainment conglomerate, was served because it was one of the original defendants due to its alleged connection with Interscope Records. There is no evidence that Luscombe or anyone else actually involved with the "Shakur Booty" article was given or read the First Amended Complaint, and unlike Fischbein, neither Luscombe nor anyone else employed by *Time* magazine was named as a defendant in that complaint. The Tuckers have simply adduced no evidence (let alone clear and convincing evidence) that Luscombe or anyone else involved with the "Shakur Booty" article was aware that the Tuckers did not intend to include injury to their sex life as a component of the loss of consortium claim.

We likewise see no merit in the Tuckers' argument that Luscombe and Time acted with actual malice because they copied other stories but then changed their language without a factual basis. Although the circumstances under which an article is changed may sometimes be enough to show actual malice, the present case does not fall into that category. This case is readily distinguishable from *St. Surin v. Virgin Islands Daily* News, *Inc.*, 21 F.3d 1309 (3d Cir. 1994). In *St. Surin*, a newspaper reporter interviewed an Assistant

United States Attorney who confirmed that St. Surin was being investigated but refused to comment on whether charges would be brought. An editor, however, "changed it to read that the government expected to file charges against St. Surin the following week." *Id.* at 1318. We held that the evidence, viewed in the light most favorable to St. Surin, showed that the editor was aware of facts showing that her changes to the article in question made it false. *See id.*

In this case, there is no comparable evidence. The "Shakur Booty" article was clearly derived in large part from previously published articles and did not change the import of those articles in any material way. Moreover, as discussed above, there is no evidence here from which a reasonable jury could find that Luscombe was on notice that the facts related in her story were false. Accordingly, we affirm the District Court's grant of summary judgment in favor of *Time* and Luscombe.

B.

Although the District Court based its judgment only on defamatory meaning and actual malice, it stated: "Counsel for all defendants have made various other arguments, not the least of which is that the statements were true. By not commenting on them, I have not necessarily rejected them." Dist. Ct. Op. at 13. On appeal, the defendants argue that the decision of the District Court may be affirmed on the alternative ground that the Tuckers have not adduced sufficient evidence that any of the challenged statements were false when made. Although we may affirm a decision on an alternative ground, *see, e.g., Erie Telecomms., Inc. v. City of Erie*, 853 F.2d 1084, 1089 n.10 (3d Cir. 1988), we decline to do so here.

Truth is an affirmative defense under Pennsylvania law, *see* 42 Pa. Const. Stat. Ann. § 8343(b)(1), but the United States Supreme Court has held that a public figure must bear the burden of proving falsity. *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1985) (holding that "the common law's rule of falsity—that the defendant must bear the burden or proving truth—must similarly fall here to a constitutional requirement that the plaintiff bear the

burden of showing falsity"); *see also Steaks Unlimited, Inc. v. Deaner*, 623 F.2d 264, 274 n.49 (3d Cir. 1980) (suggesting that Pennsylvania's practice of placing the burden of proving truth on the defendant is probably unconstitutional); *Dunlap v. Philadelphia Newspapers, Inc.*, 448 A.2d 6, 13-14 (Pa. Super. 1982) (same). Thus, even though Fischbein's comments to Luscombe are capable of a defamatory meaning, and even though he may have uttered them with actual malice, Fischbein cannot be held liable unless the Tuckers can prove that the comments were false.

We conclude that the Tuckers have pointed to proof that is sufficient to show, either by a preponderance or by clear and convincing evidence,[5] that Fischbein's statements to Luscombe after the filing of the First Amended Complaint were false.[6] The First Amended Complaint alleged that Fischbein had defamed the Tuckers when he said that they were trying to recover for damage to their sexual relations. In light of that allegation, it seems clear—and a reasonable jury could certainly find—that the First Amended Complaint itself did not seek to recover for such damage. (Surely a reasonable jury could find that, if the Tuckers' case had gone to trial under the Amended Complaint, the Tuckers did not intend to seek to recover both on the theory that Mr. Tucker suffered a loss of consortium and that Fischbein defamed them by asserting that they intended to recover for a loss of consortium.) Fischbein, however, supposedly told Luscombe that "this was a lawsuit about emotional

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5. The Supreme Court has explicitly declined to decide whether the plaintiff must prove falsity by a preponderance of the evidence or by clear and convincing evidence. *See Harte-Hanks*, 491 U.S. at 661 n.2 (declining to resolve the issue, but acknowledging disagreement among the circuits). *Compare Firestone v. Time, Inc.*, 460 F.2d 712, 722-23 (5th Cir. 1972) (Bell, C.J., concurring) (arguing for a clear and convincing standard) *with Goldwater v. Ginzburg*, 414 F.2d 324, 341 (2nd Cir. 1969) (suggesting a preponderance of the evidence standard) and *Rattray v. National City*, 51 F.3d 793, 801 (9th Cir. 1995) (adopting *Goldwater*).

6. Because we have held that there is not sufficient evidence that Fischbein acted with actual malice prior to that date, we need not and do not decide whether there was enough evidence to show that the statements he made during that period were false.

distress and one of things affected were [sic] her sexual relationship with her husband." App. 2197. We hold that there was sufficient evidence of falsity to go to the jury.

III.

Finally, we hold that the District Court correctly denied the Tuckers' motions to depose in-house counsel at *Time* and *Newsweek*. This Court exercises plenary review over a discovery order regarding claims of attorney-client privilege. *See Livingstone v. North Belle Vernon Borough*, 91 F.3d 515, 524 (3d Cir. 1996). The communications with in-house counsel involved here were clearly for the purpose of rendering legal advice and therefore are privileged. The Tuckers argue that the privilege was waived because in-house counsel reviewed stories "in the regular course of business." This argument is frivolous. That reporters regularly consult with in-house counsel to discuss potential liability for libel does not thereby deprive those communications of the protection of the attorney-client privilege. *See, e.g., Upjohn Co. v. United States*, 449 U.S. 383, 394 (1981) (holding that communications between corporate counsel and a corporation's employees made for the purpose of rendering legal advice are protected by the attorney-client privilege); *Liberty Lobby, Inc. v. Dow Jones* & Co., 838 F.2d 1287, 1302 (D.C. Cir. 1988) ("Pre-publication discussions between libel counsel and editors or reporters would seem to come squarely within the scope of the privilege as defined in *Upjohn*.").

IV.

In sum, we affirm the District Court's grant of summary judgment as to *Time* and *Newsweek*, but reverse in part as to Fischbein. We also affirm the District Court's denial of the Tuckers' motion to compel the deposition of the in-house counsel at *Time* and *Newsweek*. The case is remanded in part for proceedings consistent with this opinion.

NYGAARD, *Concurring and Dissenting.*

I agree with much of what the Majority says in its well-reasoned opinion for the court. I disagree, however, with its conclusion with respect to defendant Richard Fischbein and therefore respectfully dissent. I conclude that the District Court did not err; that a reasonable jury could *not* find that Fischbein acted with actual malice when speaking to *Time* magazine reporter Belinda Luscombe; and, that summary judgment should be affirmed in its entirety.

I begin with the Majority's conclusion that "prior to the service of the Tucker's first Amended Complaint, there is no evidence that Fischbein was informed that Mr. Tucker's consortium claim did not refer to damages to sexual relations." I agree, but I believe that the Majority dramatically understates the point. There is a substantial amount of uncontradicted evidence suggesting that, prior to the filing of their Amended Complaint, the Tuckers *did* intend to include sexual damages within their loss of consortium claim. For clarity, I will summarize this evidence in list form below:

I. In his deposition, the Tuckers' attorney, Mr. Angino, stipulated that at the time the suit was commenced, the original complaint itself provided no indication that a claim for interference with sexual relations was *not* being pursued, and that someone reading the Tuckers' complaint might assume that it alleged damage to sexual relations. (App. 566-70). In my opinion, unless otherwise stated, it is axiomatic that a loss of consortium claim includes a claim for loss of sexual relations.

II. Mr. Angino also admitted in his deposition that when the suit was initiated, *he* was not sure whether the Tuckers sought recovery for damage to their sexual relations. (App. 576). He stated that "the purpose of the consortium count was to cover everything . . . every way in which Mr. Tucker was affected, every way." (App. 575). The record does not contain any facts to the contrary.

III. The Tuckers themselves have failed to state, either in their depositions or in affidavits, that they had ruled out any

facet of their consortium claim at the time they originally filed it.

IV. The report of Dr. Harold Mignott, Mr. Tucker's physician, reveals that Mr. Tucker had "a significant amount of difficulty with impotence" at the same time that he suffered a "significant amount of stress" resulting from the "harassment" and "investigation" of both himself and his wife. The report was dated approximately one month before the Tuckers filed their claim for loss of consortium. (App. 583).

V. On July 31, 1997, the Tuckers issued a news release about the *Tucker II* lawsuit.[7] Nothing in the press release disclaimed damages for interference with sexual relations. (App. 2072-73).

VI. After observing the media's reaction to the consortium claim, Mr. Tucker had the opportunity in at least three separate interviews to clarify that he and his wife were not seeking compensation for injury to their sexual relations. Instead, Mr. Tucker confirmed in all three interviews that interference with sexual relations was indeed an element of their claims. (App. 1630-31; 2142-43; 2145).

VII. On August 13, 1997, in an interview with *Philadelphia Weekly*, Mr. Angino had a similar opportunity to clearly state for the public record that the Tuckers were foregoing any

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7. The complaint in *Tucker II* is itself a confusing farrago of missteps and errors. Appellants' attorney never discussed the loss of consortium claim with the Tuckers. (App. 518). The complaint was drafted by a law student. It misrepresented one song by taking "snippets of words from actual lyrics, words that are separated by many, many verses and run[ning] them together as if they are a continuous statement," creating what appellants' attorney now admits was "a gross and deliberate misrepresentation." (App. 534). The appellant's attorney neither listened to nor read the lyrics of the song that he alleges was defamatory. He never conducted a fact check of any of the critical allegations in the complaint. Indeed, he did not even sign it, nor is it clear from the record that he even read the final draft. His wife (who is not an attorney) signed it for him.

claims stemming from interference with sexual relations. However, Mr. Angino failed to do so. Instead, he stated that loss of consortium "is a standard addition to lawsuits of this type and refers to *all aspects* of the marital relationship, not necessarily sex." (App. 2148-49) (my emphasis).

VIII. On August 21, 1997, the Tuckers issued yet another press release. It again failed to disavow any claim arising out of Mr. Tucker's impotency or injury to the Tuckers' sexual relationship. Instead, the release confirmed the existence of such a claim and expressed the Tuckers' frustration that too much of the media's attention was focused on that aspect of the case: " 'All the media gleefully jumped on the so-called sex part in the suit that called attention to loss of consortium, which was put in there by my husband Bill, not by me,' [Mrs. Tucker] added, obviously nettled." (App. 464).

IX. The Tuckers have admitted that neither they, nor Mr. Angino, nor anyone on their behalf, ever called Fischbein, at any time, to correct his misunderstanding of the Tuckers' loss of consortium claim. (App. 571, 1968).

The Tuckers have failed to provide *any* evidence, other than the language in their Amended Complaint, to suggest that they did not intend to claim loss of sexual relations. Instead, it is obvious to me that the statements made by the Tuckers asnd their attorney were deliberately cagey and equivocal so that they could, if they wished, introduce evidence of impotence and sexual dysfunction at trial.[8]

In spite of substantial evidence to the contrary, the Tuckers still claim that all of Fischbein's statements were made with actual malice; that is, with the "knowledge that [they were] false or with

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8. Another way of approaching this issue is to ask whether at trial, given the general loss of consortium that the Tuckers originally alleged, it would have been proper for the District Court to allow introduction of evidence of Mr. Tucker's sexual dysfunction. The answer clearly is yes.

reckless disregard of whether [they were] false or not." *New York Times v. Sullivan*, 376 U.S. at 279-80. According to the Majority, the Tuckers present two independent arguments in support of their position. Although I remain unconvinced that they clearly articulate even one, I will, for the sake of discussion, address both arguments in turn.

First, the Tuckers seem to suggest that Fischbein's legal training put him on notice that loss of consortium does not always imply harm to sexual relations. According to their brief:

> Fischbein, who is a lawyer who knows the definition of consortium, knew at the time that he talked to the *Los Angeles Times* and the *Philadelphia News* and all of the other newspapers, including *Time* and *Newsweek*, that Mrs. Tucker did not claim in the Tucker I complaint that her sex life had been destroyed by the lewd lyrics of Tupac Shakur . . . Certainly a jury could find that Mr. Fischbein's uttering his sexual spin throughout this period constituted malice as defined by the Supreme Court.

(Appellants' Br. at 46-47). The Majority quickly dismisses this argument, and there is no need to consider it further, except that I question the Majority's suggestion that Fischbein may have been negligent during the period prior to the filing of the Amended Complaint. Again, I emphasize that *all* of the evidence before the court indicates that the Tuckers, at least originally, *did* intend to pursue damages for loss of sexual relations. It is hard for me to imagine how Fischbein may have been negligent in any way.

Until this point, my concerns with the Majority's opinion have been fairly minor. I strongly disagree, however, with its disposition of the Tuckers' second main argument. According to the Majority, the Amended Complaint clearly disavowed any intent to pursue damages for loss of sexual relations. As such, a jury could find that Fischbein had read the complaint, and that his subsequent comments to *Time* magazine constituted actual malice.[9] Although I

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9. I agree with the Majority that a reasonable jury could find, in light of the high stakes surrounding the law suit, that Fischbein had read the Amended

readily admit that this position is more compelling than the Tuckers' first argument, I still cannot agree. The language of the Amended Complaint, by itself, is simply insufficient to convince a reasonable jury, under a clear and convincing evidence standard, that Fischbein had actual knowledge that the Tuckers were not seeking to recover damages for loss of sexual relations

Before explaining my position, I want to be absolutely clear about two points. First, I agree with the Majority that, other than the Amended Complaint, "there is no evidence" that Fischbein acted with actual malice.[10] Thus, even under the Majority's decision,

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Complaint prior to his interview with *Time*. I disagree, however, with the Majority's conclusory statement that "it would be hard to interpret the First Amended Complaint any other way." In light of the Tucker's previous statements, and their penchant for ambiguity, I do not believe that a reasonable jury could establish actual malice based solely upon the Tuckers' five line paragraph.

10. The Tuckers contend that they indicated, through personal interviews and statements by their attorney, that they did not intend to allege loss of sexual relations. This is simply not supported by the record. For example, in their Second Amended Complaint, they claim that their attorney told a Newsweek Reporter "*unequivocally* that the complaint did not allege . . . that the actions of Defendants related in the [original] complaint had anything to do with their sex life." (App. 24). Their attorney's signature appears on this complaint. During his deposition, however, Mr. Angino admitted that, "I said only in the rarest of cases would you have a count that actually involves sex. I'm under oath, so I cannot say to you that I said specifically, this case does not involve sex." (App. 646). This is but one of many examples where The Tuckers were vague and ambiguous in their public statements and in their declarations to this Court. The Tuckers also argue that the *Webster's* dictionary definition of consortium supports their case. (App. 25). I did a quick check to verify this claim. Using the Internet (*see www.dictionary.com*, accessible via *www.websters.com*). *I* obtained the following definition of consortium:

> 3. *Law.* The right of a spouse to the company of, help of, affection of, and sexual relations with his or her mate.

Unless this definition has changed radically in the past three years, *Webster's* cuts strongly *against* the Tuckers. In sum, none of this "evidence" is sufficient to persuade a reasonable jury that any of the defendants acted with actual malice in "misinterpreting" the Tuckers' claims.

the Tuckers' *entire* claim rests solely upon the language in the Amended Complaint. As the Tuckers admit in their brief, only two paragraphs, out of the seventy-one contained in the complaint, address the question of sexual relations:

> 45. Defendant [Fischbein] has continued to defame and harass plaintiff by holding her up in a false light even after the complaint in this matter was filed on June 21, 1997.
>
> 46. Defendant Fischbein made false and misleading statements regarding the claim [asserted in the original complaint], through published statements that C. Delores Tucker filed suit because of a "loss of her sex life." The statement was untrue, and defendant Attorney Fischbein should have known it was untrue.

(App. 1711-12). Second, the Tuckers filed the Amended Complaint on August 27, 1997. The only statements made by Fischbein *after* that date, and thus the only potentially actionable comments, were those to *Time* magazine reporter Belinda Luscombe. I agree with the Majority that *all* other comments were made without actual malice. Thus, the question over which the Majority and I disagree is a fairly narrow one, and I would characterize it in the following manner: After all of the Tuckers' actions and comments to the contrary, did the language in the Amended Complaint sufficiently clarify the parameters of the loss of consortium claim so that a reasonable jury could find that Fischbein's comments to *Time* magazine were made with a reckless disregard for the truth? I strongly believe the answer is no.

The language of the Amended Complaint, in the context of the Tuckers' previous statements and actions, was insufficient to indicate a change in their attitude toward alleging a loss of sexual relations. In spite of all the media attention, and all the harm that it supposedly caused, the complaint failed to contain a simple, categorical statement that the Tuckers were foregoing any claim for interference with sexual relations. Instead, it continued to allege that Mr. Tucker had "suffered a loss of . . . consortium," using *the very same language* that was contained in the original *Tucker II* complaint. (App. 1713).

The only addition was a short paragraph stating that *Mrs. Tucker* did not file the original suit because of a loss of sexual relations. It said nothing about *Mr. Tucker,* who had originally filed the loss of consortium claim. And, as their own attorney testified, "when you damage one spouse, you damage the other spouse in each and every way." (App. 566). My conclusion is underscored by the fact that one month later, and simultaneous with the filing of the complaint at issue in this appeal, the Tuckers filed a Second Amended Complaint to *Tucker II,* in which they unequivocally stated, *for the first time,* that they were not seeking damages for interference with sexual relations. This came far too late to serve as an effective form of notice to Fischbein.[11]

Even if the language of the complaint did clearly communicate the Tuckers' position, as the Majority so holds, it is not clear to me that this evidence *by itself* is enough to support a jury's finding of actual malice. I am deeply troubled by the fact that, in spite of

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11. With regard to the gravamen of this Second Amended Complaint, plaintiffs' attorney responded as follows in his deposition:

Q. And why did you feel there was a need to have—to file a Second Amended Complaint?

A. I couldn't believe how dense the defense were.

Q. And in the Second Amended Complaint, you placed a dictionary definition of consortium; is that correct?

A. That was a joke. It was really a joke.

Q. Well, wait a minute, sir. Are you saying that you were perpetrating a joke in a Federal Court Complaint; is that what you are telling me?

A. That's what I'm telling you. I said if I had to actually give you a dictionary definition...

Q. So you were you were playing around a little bit in a Federal Court Complaint; is that correct?

A. I was saying look consortium means this.

Q. So you were playing around a little bit.

A. You—you might say that.

App. 829-30.

intense media scrutiny and its concomitant pressures, the Tuckers never publicly clarified the nature of their suit or contacted Fischbein directly, until they filed the complaint in this case. In short, they did nothing to curb public scrutiny other than amend their original complaint to include *new* claims. After the numerous public comments and accusations by the Tuckers, it is simply unreasonable to require Fischbein to infer solely from the language of the Amended Complaint that the Tuckers had changed their position.

Finally, even if the Amended Complaint by itself was enough to support a jury finding of actual malice, I do not believe that Fischbein's comments were reckless. As previously discussed, the only comments made subsequent to the filing of the Amended Complaint were those to *Time* magazine on September 12, 1997. According to Luscombe's uncontradicted notes and testimony, Fischbein stated only that *Tucker II* "was brought for emotional distress and that part of that was that her sexual relationship with her husband was affected." (App. 2197). *Time* magazine did not quote Fischbein, and Luscombe's article relied heavily upon seven previous articles, all published in respected sources from *Rolling Stone* to *The Washington Post* prior to the filing of the Amended Complaint. I find it ironic that the Majority believes there could be actual malice in a statement so similar to one attributed to Mr. Tucker in *The Philadelphia Tribune* (*my* emphasis):

> Pointedly asked how the lyrics could affect his sex life, he said, 'That's just a brief reference [in the lawsuit]—*a small part of it*. We have to represent the situation as accurately as we can and the only way to experience it is to have it happen to you.'

As previously discussed, in addition to this statement, there is a substantial amount of evidence that indicates that the Tuckers originally did bring their suit, at least in part, to recover for loss of sexual relations. Regardless of whether they later changed their position, a literal reading of Fischbein's statement to *Time* reveals no "reckless disregard for the truth."

The record demonstrates that Fischbein, at the time of his conversation with *Time* magazine, (1) was not aware that the Tuckers intended to relinquish their claims for interference with sexual relations, and (2) even if he was, his comments were not reckless. As a result, I conclude that the Tuckers cannot meet their burden of demonstrating facts sufficient to show that Fischbein made any statements that he suspected were false. As such, I would affirm the grant of summary judgment in its entirety.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1139

C. DELORES TUCKER;
WILLIAM TUCKER, her husband

v.

RICHARD FISCHBEIN; BELINDA LUSCOMBE;
NEWSWEEK MAGAZINE; JOHNNIE L. ROBERTS;
TIME INC.

C. Delores Tucker;
William Tucker,
Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. No. 97-cv-06150)
District Judge: Honorable Ronald L. Buckwalter

Argued October 1, 1999
BEFORE: NYGAARD, ALITO, and ROSENN, *Circuit Judges*.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on October 1, 1999.

On consideration whereof, it is ordered and adjudged that the judgment of the District Court entered on February 9, 1999, be and the same is hereby AFFIRMED as to appellees Belinda Luscombe, Time, Inc., Johnnie L. Roberts, and Newsweek Magazine. The judgment is REVERSED as to appellee Richard Fischbein and the case is REMANDED for proceedings consistent with the opinion of this Court.

The parties shall bear their own costs.

ATTEST:
/s/Marcia M. Waldron
Clerk

DATED: 9 January 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 97-6150

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

v.

RICHARD FISCHBEIN, TIME INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE and JOHNNIE L. ROBERTS,

Defendants.

MEMORANDUM

BUCKWALTER, J. February 9 , 1999

Defendants Time Inc., Belinda Luscombe, Newsweek Magazine, Johnnie L. Roberts and Richard Fischbein have all filed motions for summary judgment.

I. COMPLAINT AGAINST TIME AND LUSCOMBE

Essentially, the complaint against Time and Luscombe is that despite (1) the dictionary definition of consortium; (2) interviews given by plaintiffs' attorney that plaintiffs' sex life had nothing to do with the complaint; and (3) the filing of an amended complaint with the allegation in paragraph 46 that "Defendant Fischbein made false and misleading statements that C. Delores Tucker filed suit because of a 'loss of her sex life.' " Luscombe, a writer, employee, servant and agent of Time, Inc. wrote an article in the People section of the September 22, 1997 issue entitled "Shakur Booty" stating:

> The prize for the most bizarre suit, however, goes to antirap warrior C. Delores Tucker, who claims that lewd remarks made about her on Shakur's album "All Eyez On Me" caused her so much distress that she and her husband have not been able to have sex. She wants $10 million.

Am. Compl. ¶22.

The above article, according to plaintiffs, constitutes a defamatory and malicious statement that Time and Luscombe knew was not the truth when written and knew that it would, upon publication, embarrass and humiliate plaintiffs. Plaintiffs' counsel admits that plaintiffs, Mr. and Mrs. Tucker, are public figures and that they therefore have the burden of proving that the *Time* article at issue was published with actual malice.

By way of a brief background, in September of 1993, the plaintiffs began a crusade against gangsta rap, which they viewed as being pornographic, drug oriented and misogynistic. Plaintiffs attempted through various methods to publicize their crusade. One method, among others, was by filing lawsuits. Other methods included appearances at shareholder meetings of large corporations, meeting throughout the country with public officials, attendance at Congressional hearings and before state legislatures, and leading of street demonstrations in Philadelphia, New York and Washington, D.C. It was, however, the filing of their lawsuit on July 21, 1997, against, among others, the estate of Tupac Shakur, a famous gangsta rap performer, which ultimately prompted *Time*'s September 15, 1997 article.

Before the *Time* article, approximately 60 newspapers and magazines published similar articles about the lawsuit. Among them were: *The Associated Press*, *The Baltimore Sun*, *The Dallas Morning News*, *The New York Daily News*, *The Philadelphia Daily News*, *The Minneapolis Star-Tribute*, *The Washington Post* and *Newsweek*, to

name a few. It is interesting to note that virtually all of these publications "sensationalized" the story by referring to how the Tuckers claimed that their sex life had been ruined by Tupac Shakur's rap lyrics. The most common theme of these stories printed before the *Time* article was that Mrs. Tucker said the anguish from the lyrics undermined "or cut down on" her sex life with her husband.

Of the 66 accounts of the lawsuit submitted in Time and Luscombe's Exhibits, only the August 21, 1997 edition of *The Washington Post* ignored the sex angle of other papers, although not entirely. Its report under "Names & Faces" was as follows:

> Activist C. Delores Tucker, head of the National Political Congress of Black Women, has sued the estate of slain rap artist Tupac Shakur, saying his lyrics slandered her and damaged her relationship with her husband of more than 40 years, William Tucker.
>
> Tucker and former U.S. drug policy director William Bennett campaigned to stop the distribution of violent and graphic "gangsta" rap and rock lyrics. She sued Shakur's estate for $10 million earlier this week in Philadelphia, claiming that Shakur's 1996 CD "All Eyez On Me," which contains derogatory sexual references to her, caused her "great humiliation, mental pain, and suffering" and contributed to loss of her husband's "advice, companionship and consortium."
>
> "It's hard for me to conceive how these lyrics could destroy her sex life," said Richard Fischbein, an attorney who oversees Shakur's estate.

The Washinaxon Post, Aug. 2, 1997, at C3 (attached as Exhibit 17 to Defs. Mem.).

For purposes of this opinion, it is clear that nowhere in the complaint originally filed against the Estate of Tupac Shakur on July 21, 1997, or in the amended complaint filed September 2, 1997, is there a specific reference to the "sex life" of either plaintiff. In both complaints, paragraphs 50 of original and 52 of the amended, the following allegation is made:

> Plaintiffs husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium.[1]

Compl. ¶50; Am. Compl. ¶52.

In their summary judgment motion, Time and Luscombe argue that plaintiffs, in order to defeat the motion, must demonstrate that a rational jury could find that Luscombe's statements published by Time:

(1) were defamatory;

(2) were statements of potentially verifiable facts as opposed to opinion;

(3) were of and concerning both plaintiffs;

(4) were false;

(5) resulted in injury to them; and

(6) were published with actual malice.

See Defs. Mem. at 15.

I will discuss in some detail items (1) and (6). While it is not clear at this stage of the proceedings, I find, with regard to the remaining arguments presented in items (2) through (5), that there is some validity to Time and Luscombe's claims.

Time and Luscombe's claim that whether the statement was or was not defamatory is a matter to be dealt with initially by the court. In this regard, plaintiffs quote at length from Judge Giles' opinion

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1 *Consortium.* Conjugal fellowship of husband and wife, and the right of each to the company, society, cooperation, affection, and aid of the other in even conjugal relation. Loss of "consortium" consists of several elements, encompassing not only material services but such intangibles as society, guidance, companionship, and sexual relations. *Black's Law Dictionary* 309 (6th ed. 1990)(citations omitted).

in *Weinstein v. Bullick*, 827 F. Supp. 1193 (E.D. Pa. 1993). In that opinion, Judge Giles cited Pennsylvania cases supporting the following propositions:

(1) The threshold question in a defamation action is whether the publication is capable of defamatory meaning. This is for the court to decide.

(2) If the court finds a statement could be construed as defamatory, it is for the jury to determine if it was so understood by the recipient.

(3) A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

(4) In determining defamatory meaning, the court must look to the effect that it is fairly calculated to produce; the impression it would naturally engender in the minds of average persons among whom it is intended to circulate.

(5) The statement must be reviewed in the entire context.

See id. at 1196-97.

Time and Luscombe generally agree with those statements of Pennsylvania law but add that "[A] defamatory communication 'necessarily involves the idea of disgrace' and tends to cause others to 'ostracize and shun' the subject." *See* Defs. Mem. at 31 (quoting *Beckman v. Dunn*, 419 A.2d 583, 586-87 (Pa. Super. 1980)). *See also* W. Page Keeton et al., *Prosser and Keeton on Law of Torts* § 111, at 739 (4th ed. 1971)(stating that a defamatory communication "involves the idea of disgrace" and "reflects upon [the subject's] character").

The statement by Time and Luscombe could certainly be annoying and also embarrassing to the plaintiffs. But such effect cannot form the basis for a defamation action. There is a vast

difference between being annoyed and/or embarrassed on the one hand, and being disgraced and ridiculed to the extent that one's reputation is harmed and lowered in the estimation of the community, on the other. I cannot see the latter happening from Luscombe's statement published by Time in this case. Thus, I find it is not defamatory as a matter of law.

Quite apart from the issue of whether the statements are defamatory is the matter of actual malice as applicable to this case. Plaintiffs, in their effort to show that this issue deserves a jury determination, has listed 24 matters which they say circumstantially show malice. The majority of these 24 matters (15 by my count) deal with the alleged inadequate investigation by Luscombe before writing the story. I have paraphrased them as follows:

(3) Time/Luscombe's failure to obtain Tucker I complaint before reporting on its contents.

(4) Time/Luscombe's preconceived story line.

(5) Time/Luscombe's reliance upon Fischbein.

(6) Time/Luscombe's adopting Fischbein's sexual spin without quoting him.

(7) Time/Luscombe's ignoring the plaintiffs 7/31/97 news release and news articles saying media was distorting Tuckers' claim.

(10) Time/Luscombe's failure to contact plaintiffs' lawyer.

(11) Time/Luscombe's failure to ask the critical question as to whether Mrs. Tucker claimed that lewd lyrics destroyed her sex life.

(12) Time/Luscombe's selecting articles and story lines that supported their story.

(15) Time/Luscombe's not attempting to get the other side of the story.

(16) Time/Luscombe's failure to include mandated document in the Time Library.

(17) Time/Luscombe's failure to conduct a proper investigation of a story that was not "hot news."

(18) Plagiarizing other stories.

(19) Time/Luscombe's writing a story on an unfamiliar subject without consultation.

(20) Time/Luscombe's failure to be aware of the amended complaint averring falsity of media spin.

(24) Luscombe's swearing under oath that she did not even see *JET* article when it is in her Time Library source file and highlighted.

See Pls. Mem. at 13. Two of the remaining nine items deal with Time/Luscombe's failure to conform to its own guidelines and the Professional Journalists Code of Ethics. Three more items allege the publishing of the false statement because of its sensational value and failure to retract it. And the two remaining types of conduct listed by Plaintiffs are Time's post-suit actions intending to preclude discovery, and Luscombe's swearing under oath that she principally relied on *Rolling Stone* and *Newsweek* magazines in her story when she expressed doubt in her deposition.

The problem, as I see it, with plaintiffs' argument is that it lacks support in case law. As stated earlier, the plaintiffs admit that they are public figures and that therefore they have the burden of proving that Time published Luscombe's article with actual malice.

In *Masson v. New Yorker Magazine*, 501 U.S. 496, 511, 111 S. Ct. 2419, 2429 (1991), the Court expressed the manner in which the First Amendment limits libel laws by summarizing existing law as follows:

> The First Amendment limits California's libel law in various respects. When, as here, the plaintiff is a public figure, he cannot recover unless he proves by clear and convincing evidence that the defendant published the defamatory state-

> ment with actual malice, *i.e.*, with "knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280, 84 S. Ct. 710, 726, 11 L.Ed.2d 686 (1964). Mere negligence does not suffice. Rather, the plaintiff must demonstrate that the author "in fact entertained serious doubts as to the truth of his publication," *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325, 20 L.Ed.2d 262 (1968), or acted with a "high degree of awareness of ... probable falsity," *Garrison v. Louisiana*, 379 U.S. 64, 74, 85 S. Ct. 209, 215, 13 L.Ed.2d 125 (1964).

The *Masson* court went on to explain that the "actual malice under The New York Times standard should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will." *Id.* Referring to the term "actual malice" as one that can "confuse as well as enlighten" and opining that "the phrase may be an unfortunate one," the Court concluded that, "[I]n place of the term actual malice, it is better practice that jury instructions refer to publication of a statement with knowledge of falsity or reckless disregard as to truth or falsity." *Id.* at 511, 111 S. Ct. at 2430.

With the above summation of the legal setting into which this case falls, the question is: Can plaintiffs demonstrate sufficient material facts in dispute, which if viewed in favor of plaintiffs, could support a rational jury's finding by clear and convincing evidence that Time and Luscombe published the alleged libelous statement with malice? They cannot, in my judgment, because the record, viewed in favor of plaintiffs, the non-moving party, suggests, at best, that Time and Luscombe were negligent in failing to investigate the factual basis of its published statements about plaintiffs.

The allegation that Time's law department improperly equated consortium with sex provides no evidence of malice for several reasons, not the least of which is that equating consortium with sex

is not the least bit unusual. Moreover, the suggestion that not permitting in-house counsel to testify, a decision which I upheld, somehow equates to malice is not logical. The same is true when plaintiffs state that the noncompliance with professional in-house standards of conduct somehow fairly imply malice. At most, this also implies carelessness not rising to the level of reckless disregard for the truth.

The *uncontested record*, as earlier eluded to, reveals that Luscombe relied on previously published reports in reputable publications. Several cases suggest that this type of good faith reliance precludes a finding of malice as a matter of law. *See McFarlane v. Sheridan Square Press, Inc.*, 91 F.3d 1501, 1510 (D.C. Cir. 1996). In short, there is no clear and convincing evidence that Time and Luscombe "in fact entertained serious doubts as to the truth" of the article or that Time and Luscombe had a "subjective awareness of probable falsity." This high standard of proof, as established in *McDowell v. Paiewonsky*, is simply not met on the summary judgment record before this court. *See* 769 F.2d 942, 951 (3d Cir. 1985).

II. COMPLAINT AGAINST NEWSWEEK, INC. AND JOHNNIE L. ROBERTS

The sum and substance of plaintiffs' complaint against Newsweek and Roberts is that the following article was defamatory:

EXHIBIT
William Tucker
[illegible]

LEGAL AFFAIRS

Grabbing at a Dead Star

Lawsuits plague rapper Tupac Shakur's estate

By Johnnie L. Roberts

RAP STAR TUPAC SHAKUR'S ASHES had hardly cooled before the gold rush began. Now, almost a year after his death, his mother is defending the estate from an old lover who turned up to prove he's Tupac's father. An Arkansas court has already awarded $16.6 million to a woman who was shot at a Tupac concert. Until a tentative settlement last week, Tupac's label, Death Row Records, was demanding a $7 million slice, and its imprisoned CEO wanted millions more. Even C. Delores Tucker, the gangsta rap foe, wants a chunk. She and her husband claim that a lyrical attack by Tupac lured their son Ja'. "It's like being on a ship and watching pirates trying to loot it," says attorney Richard Fischbein, who administers the estate with Tupac's mother, Afeni Shakur.

As Thomas Mann wrote, "A man's dying is more the survivors' affair than his own." Since Tupac was murdered last September, his multimillion-dollar legacy has become the contentious affair of his colleagues and alleged opportunists from L.A. to Australia. In his lifetime, Tupac's profane rap lyrics and violent encounters made him controversial, helping to swell by tens of millions of dollars the coffers of Death Row and its corporate benefactors, Interscope Records, Time Warner and Seagram's Universal [illegible] MCA.

Yet Tupac was almost broke when he died. Alleging massive fraud and conspiracy, Fischbein and Afeni Shakur sued Death Row, its jailed CEO, "Suge" Knight, and its lawyer, David Kenner. They owed Tupac at least $8.9 million, the suit alleged, and $7.1 million more in expenses charged to his account that he hadn't incurred, including $250,000 for a house Kenner rented. As of last Friday, the estate was close to settling on its terms, according to Fischbein. Even before that, he adds, there was $7 million on hand from royalties and movies. A settlement could ultimately push the estate's value to $50 million, estimates one person close to the matter.

The fortune increases the stakes in the ugly probate battle in Los Angeles between Tupac's parents. Tupac had no will, there seems little doubt that he would wanted his mother to inherit. The [illegible] his biological father had always be[illegible] doubt. Although Afeni had once been [illegible] fessed drug addict, her son loved and [illegible] parted her, writing a song about her "Dear Mama." But California law req[illegible] the estate to be split by the persons if [illegible] no will. Enter William M. Garland, wh[illegible] established paternity through DNA te[illegible] "Afeni had contended that Tupac's f[illegible] was dead," says Garland's attorney, M[illegible] ell Reinis. Says Fischbein: "We still [illegible] ence of the deadbeat dad. He wasn't b[illegible] warded for his lack of interest in his son

The most serious blow to the estat[illegible] suited from a 1993 tragedy in Pine [illegible] Ark., in which Jacquelyn McCloskey, [illegible] was struck by a stray bullet at a Tupac [illegible] ert. Last November a judge granted [illegible] ages of $16.6 million when Tupac's re[illegible] executives failed to show at a hea[illegible] Fischbein says Tupac was never prop[illegible] notified of the lawsuit and that he hir[illegible] knew nothing of it until he was phone[illegible] MTV after the judgment. The estate is [illegible] pending. "The police report[illegible] tually said Tupac had nothin[illegible] do with it," Fischbein says.

Fischbein fairly snarls at [illegible] the suit by Tucker, a perenn[illegible] crusader against gangsta [illegible] On an album last year, Tu[illegible] addressed Tucker as a "mad [illegible] f--ker," and he suggested [illegible] she was a prostitute—at l[illegible] that's what she alleges in a [illegible] suit against the estate, D[illegible] Row and others. Among ot[illegible] things, the owners that [illegible] feared for her life, had been [illegible] millioned and can no longer h[illegible] sex with her husband. S[illegible] Fischbein: "I won't wait to h[illegible] her testimony on that subje[illegible] Her attorney, Richard Arn[illegible] says the lyrics "affected the f[illegible] fly union." On that note, Tu[illegible] will rest in peace.

Broke when he died: But the estate could grow to $50 million

The critic: [illegible] offered Tupac's [illegible]

Death Row boss: Demanding a slice

Prodigal dad: DNA proves paternity

BEST AVAILABLE COPY

Johnnie L. Roberts, *Legal Affairs Grabbing at a Dead Star*, *Newsweek*, Sept. 1, 1997, at 48.

Among other defenses, Newsweek and Roberts, like Time and Luscombe, contend that the article is not defamatory and that the plaintiffs cannot prove actual malice. For substantially the same reasons as set forth in the Time/Luscombe discussion, I do not find the language "iced her sex life," and the statement later in the article that Mrs. Tucker "can no longer have sex with her husband" are defamatory, in the entire context of the article. That such language can be annoying and embarrassing is certainly possible, but it is not sufficient for a defamation action.

As to actual malice, or the lack thereof, it is difficult to determine from plaintiffs' brief exactly what they are relying upon to show actual malice with regard to the Newsweek/Roberts account. The primary factor stems from a conversation between plaintiffs' attorney and Johnnie Roberts. Viewing this factor most favorably for plaintiffs would result in a finding that plaintiffs' attorney told Roberts before he wrote the story that "consortium can mean, in some cases, sex. I said most of the time it doesn't and it doesn't in this case." Angino Dep. at 165, lines 15-17 (attached as Exhibit 6 to Pls. Mem.). Newsweek and Roberts admit in their reply brief that a finding that Roberts was lying could support a finding of actual malice. But the record on summary judgment falls far short of clear and convincing evidence that Roberts was lying in his deposition. Plaintiffs' counsel concedes this when he says in his deposition, "I don't think when he [Johnnie Roberts] testified in his deposition that he was lying." *Id.* at 163, lines 11, 12.

What plaintiffs seem to be arguing is that plaintiffs' counsel told Roberts that this lawsuit was not about sex but that Roberts went ahead and wrote his story while flat out denying that version of his

conversation with Plaintiffs' counsel. Unfortunately for plaintiffs, as virtually conceded by plaintiffs' counsel, this is not the way it happened.

The following exchange took place at the deposition of Roberts by plaintiffs' attorney:

> Q. Did I say that she couldn't have any sex with her husband?
>
> J.R. No.
>
> Q. Is that she could no longer have sex?
>
> J.R. No, you didn't use those precise words, no.
>
> Q. Where did you get the words, "Can no longer have sex with her husband?"
>
> J.R. That's one of the definitions of consortium, that it affects sexual relationships.

Roberts Dep. at 219, lines 2-17 (attached as Exhibit 13 to Pls. Mem.).

This exchange seems to suggest that Roberts knew what plaintiffs' attorney's position was with regard to the loss of consortium claim, but that he chose to ignore it in light of his understanding of consortium. Simply not accepting plaintiffs' counsel's version of loss of consortium, especially in light of his other investigatory efforts, *See* Defs. Mem. (Roberts Decl. thereto), is insufficient to support a claim of actual malice. By that I am saying that the evidence does not, as a matter of law, support plaintiffs' theory that Newsweek published the Tucker story knowing that it was false or with a reckless disregard as to its truth or falsity. Moreover, plaintiffs' attorney even told Roberts that consortium can in some cases mean sex, even though in this case, it does not.

III. COMPLAINT AGAINST FISCHBEIN

Fischbein in his motion for summary judgment argues that his comments are incapable of being defamatory. I agree. Fischbein was quoted in the *Philadelphia Daily News* as saying "[I]t's hard for me to conceive how these lyrics could destroy her sex life ... [b]ut we can only wait for the proof to be revealed in court." Jamal E. Watson and Jim Smith, *A Dirty Rap, Philadelphia Daily News*, Aug. 2, 1997, at 5 (attached as Exhibit E to Def. Mem.). Fischbein was also quoted in *Newsweek* as saying, "I can't hardly wait to hear testimony on that subject." Johnnie L. Roberts, *Legal Affairs—Grabbing at a Dead Star, Newsweek*, Sept. 1, 1997, at 48.

In viewing plaintiffs' lengthy but largely irrelevant brief in reply to Fischbein's motion, it seems that the chief gripe of plaintiffs' counsel is that Fischbein has made a mockery out of the discovery process. Out of a 45 page brief, pages 7 to 45 are nothing more than extracted portions of Fischbein's deposition testimony.

Plaintiffs' brief refers only to Fischbein's "defamatory sexual spin." Assuming that Fischbein made the exact remarks as attributed to him, I am convinced they are not defamatory as I have defined that term in this opinion.

Counsel for all defendants have made various other arguments, not the least of which is that the statements were true. By not commenting on them, I have not necessarily rejected them.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 97-6150

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

v.

RICHARD FISCHBEIN, TIME INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE and JOHNNIE L. ROBERTS,

Defendants.

ORDER

AND NOW, this 9 day of February, 1999, it is hereby ORDERED that summary judgment is GRANTED in favor of Time Inc., Belinda Luscombe, Newsweek Magazine, Johnnie L. Roberts and Richard Fischbein and against C. Delores Tucker and William Tucker, in accordance with the accompanying memorandum.

BY THE COURT:

/s/RONALD L BUCKWALTER, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 976150

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

v.

RICHARD FISCHBEIN, TIME INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE and JOHNNIE L. ROBERTS,

Defendants.

ORDER

AND NOW, this 10th day of February, 1999, in light of this court's decision granting summary judgment in favor of all defendants, it is hereby ORDERED that Defendants' Motion to Disqualify (Docket No. 66), and Defendants' Motion to Exclude Plaintiffs' Expert Testimony (Docket No. 76) are DENIED as MOOT.

BY THE COURT:

/s/RONALD L. BUCKWALTER, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 97CV-4717

FILE JUL 21 1997

C. DELORES TUCKER and
WILLIAM TUCKER, her husband,

Plaintiffs

v

MTS, INC. t/a TOWER RECORDS; INTERSCOPE, INC.; INTERSCOPE RECORDS; TED FIELD; TIME WARNER; JAMES IOVINE; SEAGRAM CO.; MCA INC.; MERRILL LYNCH; DEATH ROW RECORDS, INC.; DAVID KENNER; and AFENI SHAKUR as administratrix of the ESTATE OF TUPAC SHAKUR,

Defendants

JUDGE _____

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff C. Delores Tucker is the chair of the nonprofit National Congress of Black Women, Inc. She is the former Secretary of State of the Commonwealth of Pennsylvania and Chair of the Democratic National Committee Black Caucus and the National Board of N.A.A.C.P.

2. Plaintiff C. Delores Tucker resides in the Commonwealth of Pennsylvania.

3. Plaintiff William Tucker is married to C. Delores Tucker and resides in the Commonwealth of Pennsylvania.

4. Defendant MTS, Inc., under the trade name of Tower Records, is a California Corporation with its principal place of business in California.

5. Defendant Interscope, Inc. is a California Corporation with its principal place of business in California.

6. Defendant Interscope Records is a California General Partnership with its principal place of business in California.

7. Defendant Ted Field is an owner or partner and/or has a financial interest in Interscope Records and resides in a state other than Pennsylvania.

8. Defendant Time Warner has or had a financial interest in Interscope Records, and its principal place of business is in a state other than the Commonwealth of Pennsylvania.

9. Defendant James Iovine is the President of Interscope Records and resides in a state other than Pennsylvania.

10. Defendant Seagram Co. is a company with a financial interest in Interscope and has its principal places of business outside of the Commonwealth of Pennsylvania.

11. Defendant MCA Inc. and/or Universal are corporations with a financial interest in Interscope and principal places of business in a state other than the Commonwealth of Pennsylvania.

12. Defendant Merrill Lynch is a business entity with a financial interest in Interscope and its principal place of business in a state other than the Commonwealth of Pennsylvania.

13. Defendant Death Row Records, Inc., is a California Corporation with its principal place of business in California.

14. David Kenner is an attorney representing Death Row Records, Inc., may have a proprietary and/or other financial interest in Death Row Records, and resides outside the Commonwealth of Pennsylvania.

15. Defendant Afeni Shakur who resides in a state other than Pennsylvania is the Administratrix of the Estate of deceased Defendant Tupac Shakur.

16. At all times relevant to this Complaint, up until his death on September 13, 1997, deceased Defendant Tupac Shakur was a servant, agent, apparent agent and/or employee of Defendant Death Row Records and was acting within the course and scope of employment for Death Row Records.

17. At all times relevant to this Complaint, James Iovine was a servant, agent, and/or employee of Interscope Records and was acting within the course and scope of employment for Interscope Records.

18. At all times relevant to this Complaint, David Kenner was a servant, agent, and/or employee of Death Row Records, Inc. and was acting within the course and scope of employment for Death Row Records.

19. At all times, relevant to this Complaint, Defendant Interscope Records had an exclusive distribution agreement with Defendant Death Row Records through which Interscope Records distributed under its label, recordings produced by Defendant Death Row Records.

20. At all times relevant to this Complaint, Defendant Interscope Inc., was the managing general partner of Defendant Interscope Records.

21. At all or various times relevant to this Complaint, Interscope Records was 50% owned by Seagram Co.'s MCA Inc.

22. At all or various times relevant to this Complaint, Interscope Records was owned in part by Time Warner or Time Warner had a financial interest in Interscope.

23. Prior to February, 1996, Plaintiff C. Delores Tucker was the leader of a large group of religious, moral, and law abiding citizens who marched, lobbied, and campaigned against the pornographic and drug oriented misogynistic lyrics of "gangsta" rap as created, promoted, distributed, and marketed by various defendants to minors without restriction.

24. "Gangsta rəp" is a sla..g expression using vernacular for the word "gangster" which, by definition refers to one engaged in anti-social or criminal behavior. Furthermore, the music contains vile, profane, obscene and indecent lyrics which glorify drugs, violence, and illicit sex. "Rap" or "Hip Hop" is a form of music, more spoken than sung, and can be distinguished from "gangsta rap" in

that it chronicles life in the ghetto without obscene and indecent lyrics, and may have redeeming social value.

25. Various defendants involved with Death Row Records and "gangsta" rappers take pride in the sex, drugs and "gangsta" violent behavior and its influence on increased record sales.

26. Plaintiff has focused her attention on stopping the production and distribution of said music to impressionable youth, because it tends to corrupt the morals of minors, in violation of 18 Pa.C.S.A. §6301(a), that some of it is obscene and unprotected by the Constitution, and some is "explicitly sexual material" in violation of 18 Pa.C.S.A. §5903(c). See Exhibits "A" and "B" attached hereto.

27. Said efforts met with widespread support across political, racial and economic lines, including support from William Bennett, former U.S. Secretary of Education, U.S. Senator Joseph Lieberman, Majority Leader and Vice Presidential candidate Robert Dole, and General Colin Powell.

28. In February, 1996, Defendant Interscope Records, distributed under its label, "All Eyez On Me", which is a record containing music performed by deceased Defendant recording gangsta rap superstar Tupac Shakur and produced by Defendant Death Row Records.

29. Contained on the aforementioned recording entitled "All Eyez on Me" are recordings entitled "Wonda Why they Call B" and "How Do You Want It."

30. Contained in the aforementioned recording entitled "How Do You Want It" were lyrics stating "C. Delores Tucker you're a mother fucker, instead of trying to help a brother you destroy a nigga."

31. Contained in the aforementioned recording entitled "Wonda Why they Call B" were lyrics stating "Got your legs up trying to get rich. Keep your head up and your legs closed Dear Ms. Delores Tucker" alluding to prostitution and tells why women are called bitches.

32. In January, 1996, Plaintiff C. Delores Tucker engaged in a lawful protest against the sale of gangsta rap music to minors by Defendant MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania.

33. On March 2, 1996, Plaintiff again, in the exercise of her constitutional right to protest, engaged in a protest on the premises of Defendant, MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania to stop the sale to minors of sound recordings containing sexually explicit lyrics as expressly prohibited by 18 Pa. C.S.A. §5903 and 18 Pa. C.S.A. §6301(a). See Exhibits "A" and "B".

34. As a result of her lawful protest, Plaintiff was arrested, handcuffed, and forcibly removed by police from the premises of Defendant MTS, Inc., under the trade name of Tower Records

35. The aforementioned removal of Plaintiff C. Delores Tucker from the premises of Defendant MTS, Inc., under the trade name of Tower Records, took place under the express direction or with the knowledge and consent of Defendant MTS, Inc., under the trade name Tower Records.

36. Sometime after February 1, 1996, Defendant MTS, Inc., under the trade name of Tower Records, nevertheless offered for sale and sold to minors the aforementioned sound recording entitled "All Eyez On Me", and other gangsta rap albums containing sexually explicit messages, offensively coarse language and lewd and indecent words about Plaintiff C. Delores Tucker.

37. Defendants all participated in various ways, in the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" which contained sexually explicit messages, offensively coarse language, and lewd and indecent words about Plaintiff C. Delores Tucker in violation of 18 Pa. C.S.A. §5504.

38. In August, 1995, Defendant Interscope filed suit against Plaintiff C. Delores Tucker in California charging her, *inter alia*, with Inducement to Breach the Contract between Death Row and Interscope.

39. Defendants knew full well that Plaintiff had done no such thing and filed the false claim only to embarrass her, to cause emotion distress and to deter her crusade against gangsta rap.

40. In May, 1997, the U.S. District Court for the Central District of California (Case No. CV 95-5444), Judge M. Takasugi issued an opinion that there was no breach of contract and that Plaintiff did not induce a breach of the contract as alleged by Interscope, which of course they already knew.

41. Following the lawsuits and the release of the aforementioned recordings, Plaintiff, C. Delores Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena. Indeed, two prominent murders have been reported since the unsolved murder of Tupac Shakur in September, 1996.

42. Since the lawsuits and the release of the aforementioned recordings Plaintiff, C. Delores Tucker has received death threats.

43. The lawsuits and the release of the aforementioned recordings were intended to and did cause Plaintiff C. Delores Tucker severe emotional distress.

44. By using vile and offensive language, the recordings have held her up as an object of scorn to more than 5,000,000 people, including children in Philadelphia and elsewhere.

45. Since the lawsuits and the release of the aforementioned recordings C. Plaintiff C. Delores Tucker has suffered defamation of character and reputation.

46. Plaintiff, who is frequently called upon to speak at churches throughout the country, is a moral and religious daughter of a well-known, respected Philadelphia minister, now deceased, and has

siblings, extensive family, relatives, and thousands of friends in Philadelphia and throughout the country and world, who have heard or heard about the said recording and lawsuit.

47. As a result, Plaintiff C. Delores Tucker, has incurred medical expense; has undergone mental pain, suffering, and inconvenience; loss of life's pleasures; fears for her life; has lost her personal freedom to travel freely where and when she desires; and claim is made therefor.

48. As a result of the aforesaid injuries, Plaintiff C. Delores Tucker will incur medical expense; will undergo mental pain, suffering, and great inconvenience; loss of life's pleasures; fear for her life; lose her personal freedom to travel freely where and when she desires; and claim is made therefor.

49. As a result, Plaintiff C. Delores Tucker has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

50. Plaintiff's husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT I—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Estate of Tupac Shakur, Afeni Shakur as Administratrix of the Estate of Tupac Shakur Time Warner, and David Kenner.

51. Paragraphs 1 through 50 of this Complaint are incorporated herein by reference.

52. Deceased Defendant Tupac Shakur's conduct as set forth above was extreme and outrageous.

53. As a direct and proximate result of Defendant Tupac Shakur's extreme and outrageous conduct as set forth above, Plaintiff C. Delores Tucker suffered severe emotional distress including but not limited to, feelings of fright, shock, humiliation, and outrage.

54. Defendants all participated in various ways, including the bringing of lawsuits, submitting Plaintiff Tucker to eleven days of depositions, the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" for the specific purpose of causing Plaintiff C. Delores Tucker to suffer extreme distress, fear for her life, and to lessen her resolve against "gangsta" rap.

55. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the

safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgment against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT II—SLANDER

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Afeni Shakur as Administratrix of the Estate of Defendant Decedent Tupac Shakur

56. Paragraphs 1 through 55 of this Complaint are incorporated herein by reference.

57. Deceased Defendant Tupac Shakur's aforementioned lyrics referring to Plaintiff C. Delores Tucker in "All Eyez On Me" were false and defamatory when produced, marketed, distributed and sold.

58. Deceased Defendant Tupac Shakur's aforementioned defamatory lyrics were produced with malice, meaning that said lyrics were produced with knowledge that they were false.

59. Defendants other than Deceased Defendant Tupac Shakur knowingly participated in the creation, marketing, distribution, and sale of the slanderous recording "All Eyez On Me" and refused to recall same even though there was precedent involving anti-semitic lyrics by Michael Jackson.

60. As a result of the malicious lyrics, Plaintiff C. Delores Tucker's reputation has been subject to ridicule, insult, and her reputation damaged.

61. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III—INVASION OF PRIVACY

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Afeni Shakur as Administratrix of the Estate of Defendant Decedent Tupac Shakur

62. Paragraphs 1 through 61 of this Complaint are incorporated herein by reference.

63. Deceased Defendant Tupac Shakur's lyrics contained in the aforementioned recording "All Eyez On Me" were intentionally created, recorded, marketed/distributed, sold, and not recalled for the purpose of intruding upon the private affairs and concerns of Plaintiff C. Delores Tucker.

64. Defendants all appropriated to their own use and benefit, the name of C. Delores Tucker by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me.".

65. Defendants all participated in various ways in placing Plaintiff C. Delores Tucker before the public in a false light of a kind highly offensive to the reasonable man by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

66. Defendants all participated in various ways in unreasonably and seriously interfering with Plaintiff C. Delores Tucker's interest in not having her name or likeness exhibited to the public by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

ANGINO & ROVNER, P.C.
/s/Richard C. Angino, Esquire
Attorney I.D. No. 07140
4503 North Front Street
Harrisburg, PA 17110
Counsel for Plaintiff

Dated: 7/18/97

EXHIBIT "A"

Dow Jones Index Avg. Up 47.39 7,333.55

Business

THE RAP AGAINST TIME

Levin gets earful at yearly meeting

By JON ELSEN

Time Warner CEO Gerald Levin thought his gangsta-rap headache was over when he got rid of Interscope Records last year.

Not quite.

Anti-gangsta rap crusader C. DeLores Tucker took the floor at Time Warner's annual meeting at the famed Apollo Theater in Harlem yesterday and blasted Levin for what she called Time Warner's vulgar message on gangsta rap.

"Shame on our family, Time Warner, for promoting this filth, which is corrupting our youth," said Tucker, chairwoman of the National Political Congress of Black Women. "You're murdering the destruction of our children."

Tucker pointed to two musicians on Time Warner's Atlantic label and tweaked the old-hatched, public crowd to a extensive reading of some gangsta lyrics by the rapper Lil' Kim.

When she finished, and talked to the press in the Apollo's "Tree of Hope" — traditionally knocked by performers before they go on stage — she was met with considerable applause by Time Warner stockholders.

Lil' Kim and the other rap artist Tucker mentioned, Junior M.A.F.I.A., are two of Atlantic's best-selling rap acts. They have sold more than 10,000 records, generating a estimated $15 million in revenue for Time Warner's Warner Group, which distributes them.

Atlantic Records may actually part ways soon with the producer of records by Lil' Kim and Junior M.A.F.I.A.

Unless Entertainment, which produces their records, can come to a dispute with Atlantic and is dropping its services to other labels. But while Undone may take Lil' Kim and Junior M.A.F.I.A. elsewhere, Time Warner has negotiated for itself the right to release 50 more of their recordings, even if Undone leaves.

Shareholders' response to Tucker's comments at the meeting gave an indication of what Levin may go against last year when he dumped Interscope at the urging of Tucker and William Bennett.

But Levin is no outsider problems in his music division as well. It's the one Time Warner unit not performing strongly these days.

And after he got rid of Interscope, Bronfman's MCA took picked up half of the company and went on to grant more than $200 million with it last year. Interscope released records by Death Row artists Tupac Shakur and Tha Dogg Pound.

Levin's response yesterday was his only hasty comment in an otherwise smooth annual meeting, at which he noted his company's earning reach price and promised that the company will continue that strong performance for the rest of the year.

He told Tucker that Time Warner is talking with record executives about the impact of their music, and noted that the objectionable records are only a few of the 2,500 released by Time Warner each year. He also assured all black executives who are "all part of the Time Warner family."

After the session, Levin said that Time Warner President Richard Parsons went to Washington, D.C., last week to talk to Tucker, but she wouldn't see him.

Asked if the company plans to continue producing records by Lil' Kim, Levin said to ask those at Time Warner's Atlantic records unit. addition, "I don't want to deal with the question anymore." But officials at Atlantic could not be reached.

Some have questioned Tucker's credibility as a critic because of accounts that she profited from controversial properties in Philadelphia. And she has been involved in a lawsuit filed by interscope exec claiming she's an economic motive for criticizing rap music.

Hilary Rosen, president of the Recording Industry Association of America, said Lil' Kim "wouldn't be on anyone's list of gangsta rap."

Her records are labeled having explicit lyrics. "It's the point where you can't say you don't like it, don't buy it, and you probably should tell your friends not buy it either," she said.

MEDIA CITY

EXHIBIT "B"

VIOLENCE, DRUGS, & SEXUALLY MISOGYNIST LYRICS DISTRIBUTED BY

Tupac Shakur Interscope	*Strictly 4 My Nigga:* 500,000 copies sold.	"Strugglin'--"I'd rather use my gun' cause I get my money quicker...got 'em in the frame__Bang! Bang!...blowing' muthfuckers to the moon.
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* More than 3 million sold (802,000) in one week. #1 pop album.	"Pump Pump" depicts Snoop arguing with another guy over a girl. After Snoop states. "We can handle this like some gentleman or we can get into some gangsta shit." The other individual replies "What's up nigger? What's up." Next one hears gun shots and laughter and Snoop respoods, "That's what's up." [Obviously insinuating that problems are best resolved through the use of a weapon and murder, rather than communication.]
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* Over 3 million albums sold.	"G Funk Intro"--"We travel in packs and we do it from the back, how else can you get to the booty? We do it doggy style--all the while we do it doggy style. He fucked the fleas off the bitch; she shakes the ticks off his dick, and in her booty he buries his muthafuckin'bone."
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* #1 pop album sold more than 3million copies (802,000 in a week).	"Tha' Lunatic" --"Oh shit, jumped on man's dick. Hears he had a 12-inch. Now the bitch is lovesick. Who's the blame? The guy or the groupie...now she want to do me. Hoo--wee, this is the life--new bitch every night."
Tupac Shakur Interscope	*2 Pacalypse Now* #13 R&B album	"Tha Shiznit"--"It's a 1.8.7 [California penal code for murder] on a muthafuckin' cop...so what the fuck does the nigger say? Gotta take a trip to the A...A and serve your ass with a muthafuckin' AK[47]."

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

INTERSCOPE RECORDS, INC., a California corporation, as managing general partner of INTERSCOPE RECORDS, a California general partnership, Plaintiff, vs. C. DELORES TUCKER, an individual; and ATLANTIC VENTURES, INC., a Delaware corporation, Defendants.	CASE NO. 95-5444 RMT (CTx) COMPLAINT FOR INDUCEMENT TO BREACH CONTRACT, INTENTIONAL INTERFERENCE WITH CONTRACT AND PROSPECTIVE BUSINESS ADVANTAGE; UNFAIR BUSINESS PRACTICES AND UNFAIR COMPETITION; INJUNCTIVE RELIEF AND DAMAGES (JURY TRIAL DEMANDED)

Plaintiff brings this action against defendants for the claims specified below and seeks injunctive relief and damages as follows:

PARTIES

1. The plaintiff is Interscope Records, Inc., a California corporation, as the managing general partner of INTERSCOPE RECORDS, a California general partnership ("Interscope"). Interscope has its principal place of business in the Central District of California, Western Division. Interscope is a joint venture partnership between Interscope Records, Inc. and Atlantic Ventures, Inc., a nominal defendant herein.

2. Interscope is informed and believes, and based thereon alleges, that the defendant, C. Delores Tucker ("Tucker"), an individual, resides in and is a citizen of a state other than California.

3. Interscope names as a nominal defendant, against which it seeks no relief in this action, Atlantic Ventures, Inc. ("Atlantic"), a Delaware corporation, headquartered in the state of New York.

JURISDICTION AND VENUE

4. Jurisdiction exists in this action under the principle of diversity of citizenship, 28 U.S.C. §1332, in that the matter in controversy exceeds $50,000, exclusive of interest and costs; and the Plaintiff and all of the defendants are citizens of different states.

5. Venue is properly laid in this District pursuant to 28 U.S.C. § 1302. Interscope is informed and believes, and based thereon alleges, that at all relevant times Tucker engaged in certain wrongful acts alleged below in the Central District of California, Western Division, and engaged in other unlawful, acts outside this District which caused injury to Interscope in this District. Accordingly, venue properly lies in this District.

GENERAL ALLEGATIONS

6. Interscope is a California general partnership consisting of Interscope Records, Inc. and Atlantic Ventures, Inc. ("Atlantic"), an affiliate of Time Warner Inc. ("Time Warner"). Interscope is one of the most successful record labels in the world.

7. Interscope has entered into valuable exclusive contractual arrangements with other record companies which furnish to Interscope recordings by artists for exclusive distribution through the

Interscope label. Among such companies is Death Row Records, Inc. ("Death Row Records"), with whom Interscope has an exclusive distribution agreement (the "Death Row Records Contract").

8. Interscope's exclusive contractual relationship with Death Row Records, and Time Warner's involvement in the Interscope partnership, have been widely publicized, and upon information and belief, are known by Tucker.

9. Beginning in mid-1995 and continuing to the present, Tucker, together with others whose identities are currently unknown to Interscope, embarked upon and has continued to engage in a scheme and conspiracy to destroy Interscope by committing extortion, threats and other unlawful acts. Among other things, Tucker has (a) attempted to induce Death Row Records to breach the Death Row Records Contract; (b) interfered with Interscope's valuable relationship with Death Row Records; (c) damaged Interscope's reputation and credibility in the music industry; and (d) attempted to induce Atlantic and Time Warner to breach their fiduciary obligations to Interscope. Interscope is informed and believes, and on that basis alleges, that Tucker has pursued such unlawful acts in order to create a record distribution company to distribute recordings produced by Death Row Records and other record companies and recording artists, for her own personal and financial gain.

10. Specifically, in or about July or August, 1995, Tucker attempted to pressure Death Row Records into severing its relationship with Interscope and appointing Tucker and her associates as Death Row Records's exclusive representative to negotiate a production and distribution agreement directly with Time Warner. As Tucker well knew, if Death Row Records proceeded on that course, it would result in a breach by Death Row Records of the Death Row Records Contract and a breach by Atlantic and Time Warner of their fiduciary obligations to Interscope, which would effectively destroy Interscope.

11. In order to induce Death Row Records to accede to her unlawful demands, Tucker engaged in extortion and other improper conduct in or about July and August of 1995, including the following:

(a) In a meeting in Seattle, Washington, attended by Suge Knight ("Knight"), the Chairman of Death Row Records, David Kenner ("Kenner"), the attorney for Death Row Records, and others, Tucker told Knight that she wanted to set up a record distribution company which she would control, and in which Knight would have an interest. She made it clear to Knight that Death Row Records' willingness to break away from Interscope was an integral part of her scheme. Tucker stated that she had had numerous private conversations about her plan with Gerald Levin ("Levin"), the Chairman of the Board of Directors of Time Warner, and Michael Fuchs ("Fuchs"), the Chairman of the Warner Music Group, and

that they were prepared to support Tucker by putting up "incredible amounts of money." Tucker stated, however, that Levin and Fuchs would go along with Tucker only if they believed that Tucker had the ability to control the lyrics on recordings produced by Death Row Records. Therefore, Tucker attempted to induce Knight into deceiving Levin and Fuchs into believing that she could control the lyrics, even though Knight made it clear to Tucker that he would not permit such control. In order to accomplish her deception, Tucker sought to have Knight agree to a false and fraudulent press release, and to stand beside Tucker at a press conference to falsely convey to Levin and Fuchs that she could control Knight and Death Row Records.

(b) In numerous telephone calls and meetings thereafter, Tucker and her associates threatened Knight that if he did not cause Death Row Records to break away from Interscope, Tucker would use her power and influence, and would cause Time Warner to use its power and influence, to get the Government "to go after" Knight and his attorney by investigating and prosecuting them. Knight was specifically threatened that as a result he would spend the rest of his life in jail.

(c) Furthermore, Tucker and her associates threatened that if Knight did not cause Death Row Records to break away from Interscope, Tucker would use her influence with the press, and Time Warner would use "billions of dollars to manipulate the press" to

destroy Knight and Death Row Records. Knight was told, "Even something completely innocent can be made to look terrible."

(d) Tucker told Knight that he could avoid terrible consequences if he would cooperate with her, that Time Warner would pay him "an enormous amount of money," and that Knight would be given an ownership interest in her contemplated record distribution company, if Knight would authorize Tucker and her associates to negotiate a deal on behalf of Death Row Records with Time Warner, which would "eliminate Interscope."

(e) Subsequently, Tucker claimed that she had spoken with Fuchs, and that Fuchs was prepared to have Time Warner pay Knight $80 million, and build two state of the art recording studios for him, if Knight would cooperate with Tucker.

(f) Tucker and her associates continued to apply pressure upon Knight and Death Row Records. On August 7, 1995, Tucker or her associates told Knight that Fuchs was flying from New York to Los Angeles that evening "to close the deal" with Knight. Tucker delivered to Knight a letter for Knight's signature, which Tucker had prepared, which would appoint Tucker and her associates as Death Row Records' exclusive representative to negotiate an "acceptable contract relationship with Time Warner regarding the production and distribution" of Death Row Records' recordings.

(g) Throughout Wednesday, August 8, 1995, Knight received numerous telephone messages from Tucker or her associates that Fuchs was at Dionne Warwick's home in Los Angeles waiting to meet with Knight. As the day progressed, they told Knight that Fuchs had assured them that if he was not satisfied with the terms previously proposed to Knight to eliminate Interscope, Fuchs was willing to be flexible in the negotiations. Finally, Knight was told that Fuchs had been waiting for eight hours to meet with Knight, and had to get on a plane to fly back to New York, and, therefore, Knight was urged to immediately meet with Tucker, Fuchs and others to consummate a deal.

(h) During the evening of August 8, 1995, Knight received a telephone call from Tucker or her associates stating that Fuchs was flying back to New York, and wanted to call Knight from his airplane.

12. The foregoing conduct by Tucker and her associates was unlawful, in bad faith, and in furtherance of her scheme and conspiracy.

FIRST CLAIM FOR RELIEF

[Inducing Breach of Contract, Interfering with Contractual Relations and Prospective Business Advantage]

13. Interscope realleges and incorporates by reference Paragraphs 1 through 12, inclusive, as though set forth at length.

14. The Death Row Records Contract is a valid and existing contract between Interscope and Death Row Records. Interscope is informed and believes, and on that basis alleges, that Tucker had knowledge of the Death Row Records Contract and intentionally attempted to induce a breach by Death Row Records or to disrupt the Death Row Records Contract through unlawful means. In so doing, Tucker's purpose was to damage Interscope's credibility with recording artists, songwriters, and producers, and to interfere with Interscope's prospective business advantage, in order to accomplish her scheme of establishing a record distribution company which would, among other things, distribute recordings, produced by Death Row Records.

15. As a direct result of the actions of Tucker and her associates, the contractual relationship between Interscope and Death Row Records has been disrupted, and Interscope has suffered actual and potential damages in an amount as yet unknown. Interscope shall amend its complaint to set forth the amount of its damages when ascertained.

16. The wrongful acts by Tucker were willful, wanton, malicious, and oppressive, and were undertaken with the intent to injure Interscope and to further Tucker's scheme and conspiracy to establish a record distribution company for her own profit and gain. Such conduct therefore justifies an award of exemplary and punitive damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

[Injunctive Relief]

17. Interscope realleges and incorporates by reference its allegations in paragraphs 1 through 12, inclusive, as though set forth at length.

18. Interscope is informed and believes, and on that basis alleges, that Tucker, and others acting in concert with Tucker, intend to continue to cause damage and injury to Interscope unless enjoined, by, among other things, (a) seeking to induce Death Row Records to breach the Death Row Records Contract, (b) interfering with the Death Row Records Contract, and (c) interfering with Interscope's prospective business advantage.

19. Interscope has suffered and will continue to suffer irreparable harm, for which Interscope does not have an adequate remedy at law, unless Tucker and her associates are enjoined.

20. Accordingly, Interscope is entitled to a preliminary injunction and permanent injunction prohibiting Tucker, and all those acting in concert with Tucker, from (a) attempting to induce Death Row Records, or any other party to a contract with Interscope, to breach any existing contract; (b) interfering with Interscope's existing contractual relationships; and (c) tortiously interfering with Interscope's prospective business advantage.

THIRD CLAIM FOR RELIEF

[Injunctive Relief For Attempting To Induce A Breach of Fiduciary Duty]

21. Interscope realleges and incorporates by reference its allegations in paragraphs 1 through 12, inclusive, as though set forth at length.

22. Tucker knowingly, willfully and intentionally, and through the use of unlawful means, has attempted to induce Time Warner, and its subsidiary, Atlantic, to breach their fiduciary obligations to Interscope, and to destroy the relationship between the partners comprising Interscope.

23. Interscope is informed and believes, and on that basis alleges that, unless enjoined, Tucker intends to continue to attempt to induce Time Warner and Atlantic to breach their fiduciary obligations to Interscope. Such unlawful conduct by Tucker and her associates will continue to disrupt the relationship between the

partners comprising Interscope, will create uncertainty in the music industry about Interscope's stability and viability, and will cause a loss of credibility and other irreparable harm to Interscope.

24. Interscope does not have an adequate remedy at law for the full amount of damages and injury suffered as a result of the unlawful actions by Tucker and her associates.

25. Accordingly, Interscope is entitled to a preliminary injunction and permanent injunction prohibiting Tucker, and all those acting in concert with her, from seeking to induce Time Warner and/or Atlantic to breach their fiduciary obligations to Interscope, or to otherwise unlawfully interfere with the business relationship between the partners comprising Interscope.

FOURTH CLAIM FOR RELIEF

[Unfair Business Practices and Unfair Competition]

26. Interscope realleges and incorporates by reference its allegations in paragraph 1 through 12, inclusive, as though set forth at length.

27. The wrongful conduct by Tucker and her associates alleged above constitutes unfair business practices and unfair competition

in violation of Interscope's rights under California Business and Professions Code Section 17200 *et seq.*

28. As a direct and proximate result of the foregoing unfair and unlawful conduct, Interscope has incurred irreparable harm and has been deprived of its property rights for which Interscope has no remedy at law.

29. Interscope is entitled to a preliminary *injunction and* a permanent injunction to prohibit Tucker, and all those acting in concert with her, from violating the foregoing statute; and Interscope is further entitled to all other relief against Tucker and her associates as is authorized by the statute.

WHEREFORE, Plaintiff prays judgment as follows:

1. For compensatory damages in amount to be proven at trial;

2. For exemplary and punitive damages in an amount to be proven at trial;

3. For a preliminary injunction and permanent injunction to restrain Tucker, and all those acting in concert with her, from continuing to engage in extortion and other unlawful activities for the purpose of (a) inducing or attempting to induce a breach of

contract by any party to a contract with Interscope, including but not limited to the contract between Death Row Records and Interscope; (b) interfering with Interscope's prospective business advantage; (c) inducing or attempting to induce Time Warner and/or Atlantic to breach their fiduciary obligations to Interscope; (d) interfering with the business relationship between the partners comprising Interscope; and (e) engaging in unfair business practices and/or unfair competition.

4. For reasonable attorneys fees and costs expended in the prosecution of this action, to the full extent permitted by law;

5. For pre-judgment interest to the full extent authorized by law; and

6. For such other and further relief as this Court may deem just and proper.

DATED: August 15, 1995

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
CASE NO. 95-5503
(Related Case No. 95-5444RMT(CTx))

DEATH ROW RECORDS, INC., a California corporation, Plaintiff, vs. C. DELORES TUCKER, NATIONAL POLITICAL CONGRESS OF BLACK WOMEN, INC., TIME WARNER. INC., WARNER MUSIC GROUP. INC., MICHAEL FUCHS., and GERALD LEVY, Defendants.	COMPLAINT FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT; INTENTIONAL INTERFERENCE WITH CONTRACT AND PROSPECTIVE BUSINESS ADVANTAGE; EXTORTION; UNFAIR BUSINESS PRACTICES; ABUSE OF PROCESS; CLAIM FOR INJUNCTIVE RELIEF AND DAMAGES DEMAND FOR JURY TRIAL

Plaintiff brings this action against Defendants for the claims specified below and seeks injunctive relief and damages as follows:

I. INTRODUCTION AND OVERVIEW OF ACTION

1. This is an action by Death Row Records, Inc. (hereinafter referred to as "Death Row Records") against individuals C. Delores Tucker (hereinafter referred to as "TUCKER"), the National Political Congress of Black Women (hereinafter referred to as "NPCBW"), Time Warner, Inc. (hereinafter referred to as "TIME WARNER"), Warner Music Group, Inc. (hereinafter referred to as

"WARNER MUSIC"), Michael Fuchs (hereinafter referred to as "FUCHS") and Gerald Levin (hereinafter referred to as "LEVIN"). This action seeks injunctive relief and damages against Defendants for multiple violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U. S. C. §§1961-68, as well as various other violations of federal and state laws.

Introduction to the Parties:

2. Death Row Records is a African-American owned independent record company founded approximately three years ago. Its artists are among the most popular in the music industry and its success is virtually unparalleled. Since approximately 1992, Death Row Records has had an exclusive contract with Interscope Records, whereupon Interscope Records has been the sole distributor of Death Row Records' recordings. Interscope Records is a general partnership, which is an affiliate of TIME WARNER, who holds a fifty-percent interest in all Interscope Records holdings.

3. Defendant TUCKER is the National Chair of the NPCBW organization. While the specific purposes of this organization are unknown to plaintiffs, its title suggests a purpose of promoting the role of African-American women in this nation. The allegations against Defendant TUCKER, set forth in this complaint, include her actions as a representative or officer of this organization, as well as her actions as an individual, in furtherance of the enterprise alleged in this complaint.

4. The NPCBW organization is further alleged as a separate Defendant responsible for the acts in furtherance of the enterprise as alleged in this complaint.

5. TIME WARNER, a corporation with its principal place of business in New York, owns a fifty percent share of Interscope Records and by its conduct has acted unlawfully in its business practices and its dealings in concert with Defendant TUCKER and NPCBW in furtherance of the enterprise against the interest of Plaintiff alleged in this complaint.

6. WARNER MUSIC, a corporation which is an affiliate of Defendant TIME WARNER, has acted unlawfully, through its

business practices and its dealings with Defendant TUCKER in furtherance of the enterprise alleged in this complaint.

7. LEVIN is the Chairman of the Board of Directors of Defendant TIME WARNER , and FUCHS is Chairman of the Defendant WARNER MUSIC. Defendant FUCHS and LEVIN, both as individuals as well as in their representative capacity, have acted unlawfully in their business practices and their dealings with and through Defendant TUCKER, and in furtherance of the enterprise alleged in this complaint.

Overview of the Action:

8. The success of Death Row Records as an independent record company is virtually unparalleled. Since its inception, Death Row Records has sold approximately fourteen million records accounting to gross receipts in excess of $100 million. Although Death Row Records' artist roster includes significant talent in the rhythm and blues genre, it also releases rap music. Rap music is a style of music wherein a combination of talking, as well as singing, is set to hip-hop style music. Death Row Records' principal artists, most notably Dr. Dre and Snoop Doggy Dog, have "crossed over" from appearing regularly on the rap charts to noticeable appearances on the rhythm and blues charts as well. The music charts are an expression of the sales and popularity of various forms of recorded music.

9. Much of Death Row Records' music chronicles the observations and experiences of young African-America, often describing experiences and observations arising from the urban ghettos of this country. These observations and experiences represent a part of life in America that is non-mainstream and that the government, prior to the popularity of rap music, was able to control, limit and keep from the middle class. The current appeal of this music to suburban America has caused great concern to the government, politicians and others, looking to benefit from and capitalize on these events.

10. Rap lyrics often describe observations and experiences previously shared only by those whose common denominator was an urban ghetto upbringing. However, these lyrics address subjects including abandonment, murder, rape, and a variety of other societal ills. These very same subjects when reported on and exploited by

network and other news-like broadcast shows in language understandable to their audience, are perceived to be nothing more than a way to increase ratings and profits for mainstream media. These networks and other news shows are not picketed because *they* only purport to describe and relate these events. As a result *they* are not accused of advocating the conduct about which they report.

11. While Death Row Records' rap artists, through their music and lyrics, do nothing more than report and explain societal ills, Death Row Records itself has been criticized, threatened, coerced, and held up to ridicule in a vicious and malicious attempt to curtail its success. These attacks are orchestrated to continue until the profits realized by Death Row Records can be redirected to the Defendants in such a way as to appear to appease these criticisms. These attacks which are originated by TUCKER and her cohort co-Defendants, are made not only in response to the music but in an attempt to enrich the Defendants themselves. The fact that history and news within the ghetto is conveyed by the observations and experiences of rappers in a "ghetto rhetoric" is, as compared to the network and other news shows, a distinction in form but not substance.

12. Although many of the expressions of the artists on the Death Row Records, label have been criticized as controversial, by some, the artistic freedom of expression the label provides to its artists allows them to convey their thoughts in a way that is meaningful to their primary audiences. Because interest in this form of expression transcends the ghetto and extends to every part of America, this artistic freedom of expression has contributed significantly in keeping Death Row Records on the cutting edge of relevance to its audience and a current industry leader.

13. Interscope Records has been a constant supporter of the artistic, intellectual and First Amendment rights of Death Row Records' recording artists since it became their distributor. The relationship between these entities and the public's great demand for Death, Row Records' music had established a solid business relationship and proved to be a lucrative venture.

14. For the past 13 months, Defendant TUCKER and the other Defendants have participated in a unlawful scheme to sub-

stantially interfere with and/or destroy the continuing and resulting success of Death Row Records and Interscope Records, for financial gain, furtherance of enterprise and control over musical content. As alleged in this complaint, this scheme generally began with Defendant TUCKER and possibly the other Defendants' commencing a smear campaign against Defendant TIME WARNER, Interscope Records and Death Row Records, premised on complaints about the "explicit" lyrical content of some of the music that was being released through these entities. This campaign, primarily directed toward Defendant TIME WARNER, was and is an apparent attempt to induce action through political pressure. Defendant TUCKER has made it clear on diverse occasions that one of her goals is to sever the ties between TIME WARNER and Interscope Records. In furtherance of this objective, she has written articles, appeared on television commercials and even picketed the TIME WARNER shareholder's meeting on or about June 1, 1995. Defendant NPCBW is believed to be funding, supporting, or otherwise contributing to Defendant TUCKER's campaign to force TIME WARNER to sever its relationship with Interscope Records, ostensibly due to the lyrics of some of the material recorded by Death Row Records artists.

15. As further alleged in this complaint, the actual motivation of Defendant TUCKER and other Defendants became apparent on July 7, 1995 when Defendant TUCKER, Dionne Warwick, Melba Moore and others arranged a meeting with representatives from Death Row Records in Seattle, Washington. Dionne Warwick and Melba Moore are African-American women with significant backgrounds in the area of recorded music. Representing Death Row Records at this meeting was Suge Knight, the Chief Executive Officer of Death Row Records (hereinafter referred to as "Knight"). During the course of this meeting, Defendant TUCKER indicated to Knight that her interest and goals went far beyond the mere regulation of lyrical content. Defendant TUCKER indicated that she was most interested in the formulation of an African-American owned and controlled distribution company in the music industry. It thereafter became readily apparent that this was the sole purpose for the presence of Warwick and Moore at this meeting. This July 7,

1995 meeting clearly illustrates how the campaign directed against Defendant TIME WARNER and its affiliated entities was nothing more than a calculated ruse to induce TIME WARNER to sever ties with Interscope Records which is not owned or controlled by African-Americans and deal directly with her new distribution company.

16. Factual allegations in this complaint further indicate the sum and substance of Defendant TUCKER's proposal at the July 7, 1995 meeting. Generally, Defendant TUCKER suggested that she would control the new distribution company that would be created in lieu of Interscope Records and that Knight would have some interest in said company. Defendant TUCKER made it clear that Death Row Records' willingness to break away from Interscope Records was an integral part of her plan, even though it was never represented at the meeting nor was it true that Death Row Records would break away from Interscope Records. Defendant TUCKER further stated that she had numerous private conversations with Defendants LEVIN and FUCHS, and that they were prepared to financially support Defendant TUCKER's endeavor with "incredible amounts of money." Defendant TUCKER stated, however, that LEVIN and FUCHS would only go along with her plan if they believed that she had the ability to control the lyrics on Death Row Records recordings.[1] At that time, Knight clearly indicated to Defendant TUCKER that he stands behind the artistic expression of the Death Row Records artists and that he would not permit any such control over the lyrical content of the music.

17. Through their course of conduct, actions and dealings, Defendants TUCKER, FUCHS, LEVIN, TIME WARNER, and WARNER MUSIC are all alleged to have acted in furtherance of the enterprise set forth in this complaint as the loose-knit association-in-fact for the purpose of establishing a distribution company maintained by Defendant TUCKER for the purpose of doing business with TIME WARNER.

18. The majority of the remaining allegations contained in this complaint involve unlawful racketeering, fraud, extortion and other deceptive and overt acts committed by the Defendants, in an at-

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[1] Defendants LEVIN and FUCHS were in fact willing to aid and abet Defendant TUCKER's illegal financial coup provided that they would also provide Defendant TIME WARNER sufficient cover from political and media criticism.

tempt to fraudulently negotiate a contract for Defendant TUCKER's new distribution company with TIME WARNER and to force Knight and Death Row Records to break, away from Interscope Records and agree to be distributed by this new distribution company.

III. JURISDICTION AND VENUE

19. Jurisdiction exists in this action pursuant to 28 U.S.C. § 1331, since substantial federal questions are presented under the Racketeer Influenced and Corrupt Organizations Act ("RICO"); 18 U.S.C. §§ 1961-68. This Court has pendant and supplemental jurisdiction over the remaining claims.

20. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391 and 1392. Death Row Records believes and thereupon alleges that, at all relevant times, the Defendants engaged in certain wrongful acts alleged below in the Central District of California, Western Division, and engaged in other unlawful acts outside this District, which caused injury to Death Row Records in this district.

IV. THE PARTIES

21. *Plaintiff:*

a. Death Row Records is a corporation incorporated under the laws of the State of California having its principal place of business in the State of California, Central District, Western Division. Therefore, Death Row Records is and was at all times mentioned herein a citizen of the State of California, by virtue of its incorporation and principal place of business.

22. *Defendants:*

a. Death Row Records upon information and belief, and on the basis of such information and belief alleges that Defendant TUCKER, an individual, resides in and is a citizen of a state other than California.

b. Death Row Records is informed and believes, and on the basis of such information and belief alleges that NPCBW is a corporation doing business as a nonprofit organization and is incorporated under the laws of the District of Columbia having its principal place of business in Washington, D. C.

c. The citizenship of Michael FUCHS is unknown to Death Row Records at the time of this pleading.

d. The citizenship of Gerald LEVIN is unknown to Death Row Records at the time of this pleading.

e. Death Row Records is informed and believes, and on the basis of such information and belief alleges that TIME WARNER is a corporation incorporated in the State of Delaware having its principal place of business in New York City, New York.

f. Death Row Records is informed and believes, and on the basis of such information and belief alleges that WARNER MUSIC is a corporation incorporated in the State of Delaware having its principal place of business in New York City, New York.

V. GENERAL ALLEGATIONS

23. Death Row Records is a California corporation doing business in Los Angeles County.

24. Death Row Records' recordings are distributed by Interscope Records, an affiliate of TIME WARNER, pursuant to an exclusive distribution agreement (hereinafter referred to as the "Death Row Records Contract").

25. Death Row Records' contractual relationship with Interscope Records, and TIME WARNER's involvement with the Interscope Records partnership have been widely publicized and, upon information and belief, are known by all Defendants.

26. Since the execution of the Death Row Records Contract, Death Row Records and Interscope Records have supported the First Amendment rights of their artists, in their freedom of expression and have had unified their defenses against criticism.

27. Beginning in mid-1995 and continuing to the present, Defendants and others whose identities are currently unknown to Death Row Records embarked upon and have continued to engage in a scheme and conspiracy to destroy the goodwill and contractual relationship between Death Row Records and Interscope Records by committing extortion, threats and other unlawful acts. Among other things, Defendants have done the following to harm Death Row Records:

a. Attempted to force or compel Death Row Records to breach the Death Row Records distribution Contract with Interscope Records.

b. Interfered with Death Row Records' valuable relationship with Interscope Records.

c. Damaged Death Row Records' reputation and credibility in the music industry.

d. Attempted to interfere with the artistic expression and First Amendment rights of Death Row Records' artists.

28. Based upon information and belief, the unlawful acts causing the harms listed in the preceding paragraph, were pursued for personal and financial gain by the Defendants.

29. It is further based on information and belief that the unlawful acts referenced above were pursued in order to create a new record distribution company, apart from Interscope Records, to distribute records produced by Death Row Records and other record companies and recording artists.

30. It is further based on information and belief that the unlawful acts referenced above were pursued in order for Defendants to regulate the lyrical content of the recordings produced by Death Row Records and other record companies and recording artists.

Defendant TUCKER Positions Herself and Sets the Stage for Bargaining:

31. Based upon information and belief, Defendant TUCKER holds the position of National Chair of NPCBW, an organization with the alleged purpose of promoting the role of African-American women.

32. Based upon information and belief, Defendant TUCKER, NPCBW and others unknown to plaintiff at this time, instituted a campaign against what Defendant TUCKER has termed music containing "explicit" lyrics.

33. Based upon information and belief, the alleged purpose of this campaign against "explicit" lyrics was to regulate the content of song lyrics, specifically lyrics of rap music and to put political pressure on companies which supported such music.

34. Based upon information and belief, TIME WARNER was singled out by Defendants TUCKER, NPCBW and others unknown to Plaintiffs at this time for their support of music with "explicit" lyrics, and more specifically, for their part-ownership of Interscope Records.

35. Based upon information and belief, Defendant TUCKER appeared on television, radio, and in newspapers, nationwide, with her criticism against TIME WARNER for supporting music containing "explicit" lyrics. At all times material in her public posturing, Defendant TUCKER did not disclose her ulterior motive to replace and supplement Interscope Records as the distributer of the recorded output of Death Row Records. This commercial goal was hidden and obscured by Defendant TUCKER.

36. During the year 1995, Defendant TUCKER appeared at a shareholder meeting for TIME WARNER where she picketed in front and publicly denounced TIME WARNER for their support of music containing "explicit" lyrics, and its alleged denigration of African-American women.

37. Based upon information and belief, Defendants TUCKER, NPCBW and others unknown to plaintiffs at this time recruited and joined forces with former education secretary William Bennett, to create political pressure on TIME WARNER to regulate music containing "explicit" lyrics.

38. Based upon information and belief, Defendant TUCKER, NPCBW and others unknown to plaintiffs at this time, encouraged, entreated or enlisted United States Senator Robert Dole and other politicians to join in its criticism against TIME WARNER and other companies which were then involved in the production of music containing "explicit" lyrics. The sole purpose of these acts was to increase the political pressure on TIME WARNER.

39. Based upon information and belief, TIME WARNER, WARNER MUSIC, FUCHS and LEVIN held meetings with Defendant TUCKER and others unknown to plaintiffs at this time to discuss DefendantTUCKER's concerns about the content of the music produced by companies supported by TIME WARNER. At one of these meetings upon information and belief, Defendant TUCKER disclosed

to Defendants FUCHS, LEVIN and their respective corporations her intent not only to restrain the creative actions of Death Row Records' artists, but to participate in the formation of a new company to replace Interscope Records as Death Row Records' distributor.

Defendant TUCKER Orchestrates Meeting in Seattle:

40. At or about July 1995, a meeting was held by and between Defendant TUCKER, Warwick, Moore, Knight and others in Seattle, Washington. Knight was told prior thereto that the purpose of this meeting would be to discuss Defendant TUCKER's concerns about lyrics on recordings by Death Row Records. Defendant TUCKER upon commencement of the meeting commented on the fact that while no African-American record distribution company exists, one should now be created. Defendant TUCKER further informed Knight that it was her desire to create this new record distribution company which she would control and in which Knight would have some interest.

41. At the aforementioned meeting, Defendant TUCKER made it clear to Knight that Death Row Records' willingness to break away from Interscope Records, was an integral part of her scheme to create her own African-American distribution company. Defendant TUCKER acknowledged that Death Row Records' success and market share would provide her new company with immediate economic viability.

42. Defendant TUCKER represented to Knight that she had numerous private conversations with LEVIN and FUCHS about her plan and that they were prepared to support Defendant TUCKER by putting up "incredible amounts of money" to pay Death Row Records if it agreed to breach its agreement with Interscope Records. Defendant TUCKER stated, however, that LEVIN and FUCHS would cause the corporate Defendants to cooperate with Defendant TUCKER only if they were assured that Defendant TUCKER had the ability to control and censor the lyrics on all recordings produced by Death Row Records.

43. Knight responded to Defendant TUCKER's demands by stating that he would vigorously defend the artistic and expressive rights of his artists and would not enter into any agreement which would regulate the content of his artist's or company's music or lyrics.

44. Based upon information and belief, Defendant TUCKER

then attempted to induce Knight into deceiving LEVIN, FUCHS and TIME WARNER into believing that she would control the lyrics, even though Knight made it clear to her that he would not countenance such control.

45. Based upon information and belief, in order to accomplish her deception, Defendant TUCKER attempted to have Knight agree to a fraudulent press release. The purpose of the press release was to falsely convey to LEVIN, FUCHS and TIME WARNER that she could control both Knight and Death Row Records and its artists. Knight refused to sign this press release and agreed to sign a simple one line statement to the effect that he was aware of the existence of Defendant TUCKER's organization and her concerns about lyrical content. Both of these statements were true.

46. Based upon information and belief, after Knight refused to sign the fraudulent press release demanded by Defendant TUCKER, Defendant TUCKER then asked Knight to stand next to her at a press conference to verify he was aware of her concerns and her organization. Defendant TUCKER' s undisclosed purpose was to falsely convey to LEVIN and FUCHS that she had Knight's approval and that he had agreed to allow her to regulate Death Row Records' music and lyrics. This purpose was wholly unknown to Knight.

47. Having been completely uninformed that a press conference had been called, to commence immediately after this meeting, and disapproving of any fraudulent innuendo that may be drawn from him standing next to Defendant TUCKER at said conference, Knight refused to stand next to Defendant TUCKER or even remain present for the conference.

Threats Instigated Against Knight and Death Row Records

48. In the days following the meeting in Seattle, Defendant TUCKER and persons acting on her behalf and on behalf of NPCBW made numerous phone calls to Knight in which Knight was threatened that if he did not cause Death Row Records to break away from Interscope Records, Defendant TUCKER and NPCBW would use their powers and the influence of the above mentioned enterprise, to cause the government "to go after" Knight, by investigating and prosecuting him for fictitious offenses. Knight was spe-

cifically threatened that as a result of the use of the "enterprise's" (Defendant TUCKER and NPCBW) power and influence that Knight would spend the rest of his life in jail.

49. In the phone calls referenced above, Defendant TUCKER and persons acting on her behalf and on the behalf of NPCBW further threatened that they would use their influence with the press and cause TIME WARNER to use "billions of dollars to manipulate the press" in an effort to destroy Knight and Death Row Records. Knight was told directly by Defendant TUCKER that "even something completely innocent can be made to look terrible." Defendant TUCKER told Knight that he could avoid these terrible consequences if he would cooperate with her. He was further told that TIME WARNER would pay him "an enormous amount of money" and he would be given an ownership interest in her contemplated record distribution company. Finally, he was told that all this would occur if Knight would authorize Defendant TUCKER and her associates to negotiate a deal with TIME WARNER which will "eliminate Interscope Records" and substitute her African-American distribution company.

50. Subsequent to the phone calls referenced above, Defendant TUCKER again personally phoned Knight. In this phone conversation she claimed that she had spoken with FUCHS and that he was prepared to have TIME WARNER pay Knight eighty million dollars and build two state-of-the-art recording studios for him, if he would cooperate with Defendant TUCKER and eliminate his legal relationship with Interscope Records.

51. From late July to early August, Defendant TUCKER and her associates continued to apply unlawful pressure upon Knight and Death Row Records. The threats, extortion and commercial bribery attempts continued incessantly.

52. On August 7, 1995, Defendant TUCKER or her associates informed Knight that Defendant FUCHS was flying from New York to Los Angeles that evening to "close the deal" with Knight. As there was no agreed upon deal, Knight was unsure of why Defendant FUCHS was coming to Los Angeles.

53. Defendant TUCKER then delivered to Knight a letter for Knight's signature, which Defendant TUCKER had prepared and

which would serve to appoint Defendant TUCKER and her associates as Death Row Records' exclusive representative to negotiate an acceptable contractual relationship with TIME WARNER regarding the production and distribution of Death Row Records' recordings. At no time prior to the presentation of this letter had Knight ever agreed to either its content or its terms. A true and correct copy of the aforementioned letter is attached hereto as Exhibit (1) and incorporated by reference hereto and incorporated by reference.

54. Upon information and belief at or about the same time, FUCHS, after conferring with the Defendant LEVIN determined that it was the position of both Defendants LEVIN and TIME WARNER to agree to virtually any financial demand made in favor of Defendant TUCKER and NPCBW. The acquiescence to the extortion was made in a calculated effort to deflect the continuing onslaught of political criticism then being generated by Defendants TUCKER and NPCBW. As a result FUCHS was directed by LEVIN to cut any deal demanded and was further instructed to go personally to Los Angeles to save Defendant TIME WARNER any further embarrassment arising from the criticism of TIME WARNER's involvement in the rap genre.

55. Throughout August 8, 1995, Knight continued to receive numerous telephone messages from Defendant TUCKER, and/or her associates, informing him that FUCHS was at Warwick's home in Los Angeles waiting to meet with Knight. As the day progressed, Defendant TUCKER, and those acting on her behalf, informed Knight that FUCHS had assured them that if Knight was not satisfied with the terms previously proposed to him to breach the Interscope Records agreement, FUCHS would be flexible in the negotiations. Knight was further informed that FUCHS had been waiting for eight hours to meet with Knight and had to leave for the airport to return to New York. Knight was further urged to immediately meet with Defendants TUCKER, FUCHS and others to consummate the deal. Upon information and belief, the trip to Los Angeles for this meeting was made exclusively to sign the aforementioned "deal" with Knight. It is further alleged upon information and belief that Defendant FUCHS had used the Time Warner corporate aircraft to travel to and from Los Angeles for this desired meeting.

56. During the evening of August 8, 1995, Knight received another telephone call from Defendant TUCKER or one of her

associates, stating that FUCHS was airborne to New York and wanted to determine if Knight would accept a call from the air. Knight demurred.

57. Knight refused to attend the meeting with FUCHS and Defendant TUCKER in Los Angeles or to receive a call from FUCHS on his airplane, despite the numerous phone calls and requests, for him to appear, or talk with FUCHS. Based upon information and belief, FUCHS's flight to Los Angeles was for the sole purpose of inducing Death Row Records to break their contract with Interscope Records and sign some form of an agreement directly with TIME WARNER which allowed Defendant TUCKER and her African-American company the distribution rights to the recorded output of Death Row Records.

58. On August 9, 1995, Knight sent a letter to Warwick, Defendant TUCKER and FUCHS which stated that he would not allow Death Row Records to enter into any contract which regulated the content of his artist's or company's lyrics. A true and correct copy of the aforementioned letter is attached hereto as Exhibit (2) and incorporated by reference. hereto and incorporated by reference.

59. Upon information and belief, from the time of the meeting in Seattle to present, Defendant TUCKER has made no further public statements criticizing rap music lyrics. In coordination with Defendant TUCKER's incorrect assumption that Knight was prepared to sign an agreement, this abstention is consistent with Defendant TUCKER's obvious pecuniary interest which was communicated at the Seattle meeting.

VI. SPECIFIC ALLEGATIONS

First Cause of Action

(Racketeering 1962 (b) and (c))

60. Death Row Records reallege and incorporates by reference paragraphs 159, inclusive, as though set forth at length.

The Enterprise:

61. At all times relevant to this complaint, Defendants TUCKER, NPCBW and others unknown to plaintiff at this time, joined together to form an "enterprise" as defined by Title 18 United States Code § 1961(4), that is, a group of individuals associated in fact which functions as a continuing unit with an ascertainable

structure separate and distinct from that of the conduct of the patteft, of racketeering activity. Based on information and belief, Death Row Records alleges that the Defendants intend to establish and own an interest or control in a record distribution company controlled by Defendant TUCKER. It is further alleged that this record distribution company has as its principal unlawful aim to acquire the distribution rights of Death Row Records and induce them to terminate their lawful relationship with Interscope Records. The means used by the enterprise to accomplish this goal include but are not limited to extortion, mail fraud, wire fraud, interference with interstate commerce, and a conspiracy to do any and all of the aforementioned acts. The looseknit association of the Defendants to further this purpose and the distribution company that they are attempting to establish is an "enterprise" within the meaning of 18 U.S.C. §1961(4). Defendants FUCHS, LEVIN, TIME WARNER and WARNER MUSIC are aiding and abetting the enterprise by tacitly agreeing to and supporting the illegitimate goals of the enterprise in an effort to deflect the current political pressure being exerted against Plaintiffs by Defendants TUCKER and NPCBW. FUCHS, LEVIN and the TIME WARNER Defendants are acting through the enterprise to defuse the tempest concerning the rap lyrics and are willing to allow the Plaintiffs to be exploited by the enterprise

62. Among the enterprise's associates' legitimate purposes are the promotion of the role of African-American women and to regulate the contents of lyrics contained in rap music. Among the enterprise's associates' illegitimate purposes are to induce Death Row Records to breach its contract with Interscope Records. Subsidiary to and in addition to these goals, Defendants have resorted to illegal means to accomplish these objectives.

63. The above described enterprise is comprised of Defendant TUCKER and NPCBW, a nonprofit corporation pursuing, among other things, legal objectives in states unknown to plaintiff at this time. NPCBW is involved in the legal operation of its nonprofit organization. TIME WARNER which is in this instance acting through the enterprise is a legally operated conglomerate with the majority of its subsidiaries involved in the media industry.

64. The individual Defendants are involved with each other in

the legal activities of the corporate Defendants, as well as in the illegal activities alleged herein.

65. All individual Defendants alleged herein and corporate Defendants alleged herein are "persons" within the meaning of 18 U.S.C. § 1961(3), each existing separately and apart form the enterprise.

Pattern of Racketeering Activity:

66. Defendants are attempting to acquire or maintain an interest in or control of the above mentioned enterprise, through a pattern of racketeering activity in direct violation of 18 U.S.C. § 1962 (b). The Defendants are conducting or participating, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activities described below in direct violation of 18 U.S.C. §1962 (c). The predicate criminal acts constitute a pattern of open ended continuity to a complex scheme and pose a further threat of future criminal conduct through acts of racketeering. The multiple predicate acts are set forth below and all contributed to the Defendant's acquisition or maintenance of an interest in or control of the aforementioned enterprise:

a) *Extortion:* Death Row Records alleges that Defendants have obtained or have sought to obtain property from Death Row Records by a wrongful use of force or fear against Knight in order to induce the consent of Death Row Records to provide such property. On or about July 7, 1995 Defendant TUCKER and her representatives made numerous threatening phone calls to Knight, with the purpose of forcing Death Row Records to break away from Interscope Records and negotiate with Defendant TUCKER's new distribution company and TIME WARNER. The Defendants' wrongful use of force or fear was the direct and proximate cause of economic harm or loss of property to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial. The Defendants' wrongful use of force or fear was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense.

b) *Mail Fraud (18 U.S.C. 1841):* That Defendants have de-

vised a scheme or artifice to defraud using the mails in furtherance of the scheme Defendant TUCKER delivered to Knight a letter for his signature which Defendant TUCKER had prepared and which would appoint her and her associates as Death Row Records' exclusive representative to negotiate an acceptable contractual relationship with TIME WARNER, this letter fraudulently purported that Knight had already agreed to said arrangement.

c) *Wire Fraud (18 U.S.C. §1343):* Defendants have used the wires, radio, or television communications in furtherance of the above referenced scheme with the specific intent to deceive or defraud, as alleged in paragraphs 48-59. Defendants' fraudulent conduct was the direct and proximate cause of economic harm to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial. Defendants' fraudulent conduct was willful, wanton, malicious, and oppressive, and was undertaken with the intent to defraud Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense.

d) *Interference with Interstate Commerce (18 U.S.C. § 1951-2):* Death Row Records alleges that Defendants unlawfully interfered with interstate commerce by transporting persons and things in interstate commerce in furtherance of this scheme and in violation of 18 U.S.C. §§1951-2.

e) *Conspiracy:* The Defendants, which constitute two or more persons, have acted in concert with each other to commit the above listed predicate acts which comprise a pattern of racketeering. The Defendants have acted in furtherance of this conspiracy, in violation of federal law.

67. As a result of Defendant's violations of 18 U.S.C. §1962 (b) and (c) in furtherance of the enterprise, Plaintiff has is entitled to recover treble damages, interest, attorney's fees and costs.

Second Cause of Action

(Racketeering 1962 (d))

68. Death Row Records reallege and incorporates by reference paragraphs 1-67, inclusive as though set forth at length.

69. Defendants TUCKER, NPCBW, FUCHS, LEVIN TIME WARNER and WARNER MUSIC, conspired with each other to violate the provisions of 18 U.S.C. §1962 (b) and (c), with the knowledge and intent that such acts were in furtherance of the enterprise's continuing and concerted course of conduct with the purpose and effect to induce Death Row Records and its principle to breach the legally enforceable contract with Interscope Records through fraud and coercion.

70. As a result of the conspiracy between and among the members of the enterprise and their efforts to harm the Plaintiff in violation of 18 U.S.C. § 1962 (b) and (c), Plaintiff has suffered damages.

71. Pursuant to 18 U.S.C. §1964 (c), Plaintiff is entitled to recover treble damages, interest, attorney's fees and costs.

Third Cause of Action

(Conspiracy To Interfere with
Advantageous Business Relationships)

72. Death Row Records reallege and incorporates by reference Paragraphs 1 through 71, inclusive, as though set forth at length.

73. The Defendants, which constitute two or more persons, have acted in concert with each other to commit the unlawful behavior alleged in paragraphs 23-59 of this complaint and have acted in furtheranee thereof, in violation of federal and state law.

Fourth Cause of Action

(Intentional Interference with Contract and
Prospective Business Advantage)

(State)

74. Death Row Records reallege and incorporates by reference Paragraphs 1 through 73, inclusive, as though set forth at length.

75. The "Death Row Records Contract" is a valid and existing contract between Death Row Records and Interscope Records. This

contract has provided and has the probability of providing in the future economic benefits to Death Row Records.

76. Upon information and belief, Defendants had knowledge of the "Death Row Records Contract" as well as the past and prospective economic benefit to the parties of the contract.

77. Defendants intentionally committed acts designed to disrupt the relationship between Death Row Records and Interscope Records by attempting to induce Death Row Records to breach the "Death Row Records Contract" through unlawful means (hereinafter referred to as "Defendants' wrongful conduct").

78. Defendants' wrongful conduct caused disruption of the relationship between Death Row Records and Interscope Records.

79. Defendants' wrongful conduct was the direct and proximate cause of economic harm to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial.

80. Defendants' wrongful conduct was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense. Such conduct, therefore, justifies an award of exemplary and punitive damages in an amount to be proven at trial.

Fifth Cause of Action

(Extortion)

(State)

81. Death Row Records reallege and incorporates by reference Paragraphs 1 through 80, inclusive, as though set forth at length.

82. Defendants have obtained or sought to obtain property from Death Row Records by the wrongful use of force or fear against Knight with the purpose to induce Death Row Records to provide such property to Defendants. Defendants' wrongful use of force or fear was the direct and proximate cause of economic harm or loss of property to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown

at this time, and will be proved at trial. Death Row Records alleges that Defendants' wrongful use of force or fear was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense.

Sixth Cause of Action

(Unfair Business Practices)

(State)

83. Death Row Records reallege and incorporates by reference Paragraphs 1 through 80, inclusive, as though set forth at length.

84. Defendants' wrongful conduct, alleged above, constitutes unfair business practices in violation of Death Row Records' rights under California Business and Professions Code, §§7200 et seq.

85. Defendants' unfair conduct was and will be the direct and proximate cause of irreparable harm to Death Row Records and that Death Row Records has been and will be deprived of its property rights for which Death Row Records has no remedy at law. Death Row Records will be irreparably harmed if an injunction is not issued enjoining Defendants from engaging in acts of bribery and extortion and enjoining Defendants from taking steps to interfere with Plaintiff's First Amendment rights to publish song lyrics.

86. The Plaintiff will be irreparably harmed in that if they acquiesce to Defendants extortion they will be forced to breech a valid contract. If Plaintiff does not acquiesce to the extortion, Plaintiff's song lyrics will be forcibly regulated by Defendant's actions

87. Death Row Records is, therefore, entitled to a temporary restraining order, preliminary injunction and permanent injunction by the foregoing statute to prohibit Defendants, and each of them, from violating the foregoing statute. Death Row Records is further entitled to all other relief against Defendants as authorized by the statute.

Seventh Cause of Action

(Abuse of Process)

(State)

88. Death Row Records reallege and incorporates by reference Paragraphs 1 through 87, inclusive, as though set forth at length.

89. Defendants have obtained or sought to obtain property from Death Row Records by threatening to fabricate and pursue a course of conduct designed to cause criminal and civil liability to Knight in order to induce the consent of Death Row Records to provide such property.

90. Defendants' wrongful use of the criminal and civil justice system was the direct and proximate cause of economic harm or loss of property to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial.

91. Defendants' wrongful use of the criminal and civil justice system was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense. Such conduct, therefore, justifies an award of exemplary and punitive damages in an amount to be proven at trial.

Eighth Cause of Action

(Claim for Injunctive Relief)

92. Death Row Records reallege and incorporates by reference Paragraphs 1 through 91, inclusive, as though set forth at length.

93. Plaintiff requests this Court to permanently and temporarily enjoin Defendants from engaging in acts of extortion, from interfering with Plaintiff's First Amendment right to chose song lyrics, and from any other unlawful act alleged in this complaint.

94. If temporary and permanent injunctive relief is not granted, the Plaintiff will be irreparably harmed for which no adequate remedy at law exists. The Plaintiff will be irreparably harmed in that if they acquiesce to Defendants' extortion, they will be forced to

breach a valid contract. If Plaintiff does not acquiesce to the extortion, their song lyrics will be forcefully regulated by Defendant's actions, in violation of Plaintiff's First Amendment rights.

95. Accordingly, Death Row Records is entitled to a temporary restraining order, preliminary injunction and permanent injunction prohibiting Defendants from the acts described in paragraph 93.

WHEREFORE, plaintiff Death Row Records prays judgement for above alleged causes of action, as follows:

For the First And Second Causes of Action

1. For treble damages sustained by Death Row Records in an amount to be determined at trial.

For All Causes of Action

2. For compensatory damages in amount to be proven at trial;

3. For exemplary and punitive damages in amount to be proven at trial;

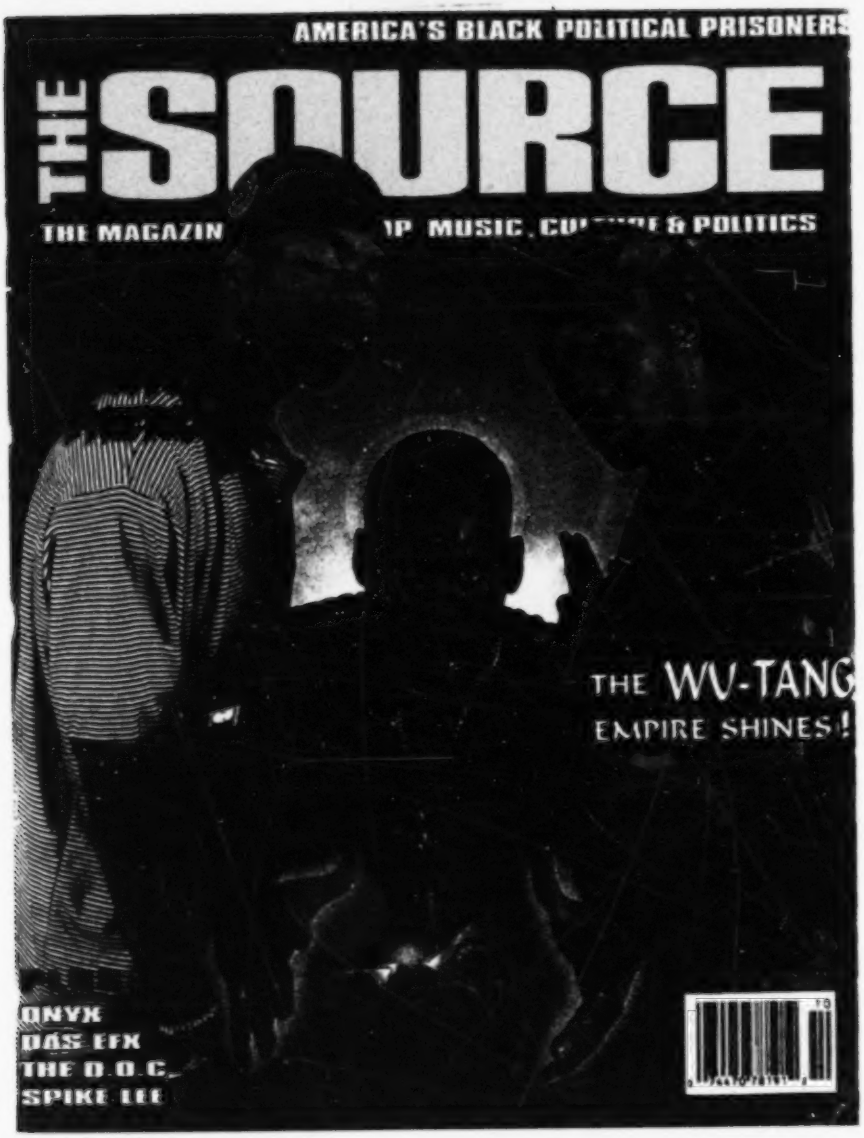
4. For a preliminary injunction and permanent injunction to restrain the Defendants, and all those acting in concert with them, from continuing to engage in violations of Racketeer Influenced and Corrupt Organizations Act, from continuing to engage in any of the predicate acts upon which such allegations are based and all other wrongful and unlawful activities set forth in this complaint;

5. For reasonable attorneys fees and costs expended in the prosecution of this action, to the full extent permitted by law; and

6. For such other and further relief as this Court may deem just and proper.

DATED: August 17, 1995

Law Offices of David E. Kenner
By: /s/ David E. Kenner
Attorney for Plaintiff,
Death Row Records, Inc.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THE D.O.C.
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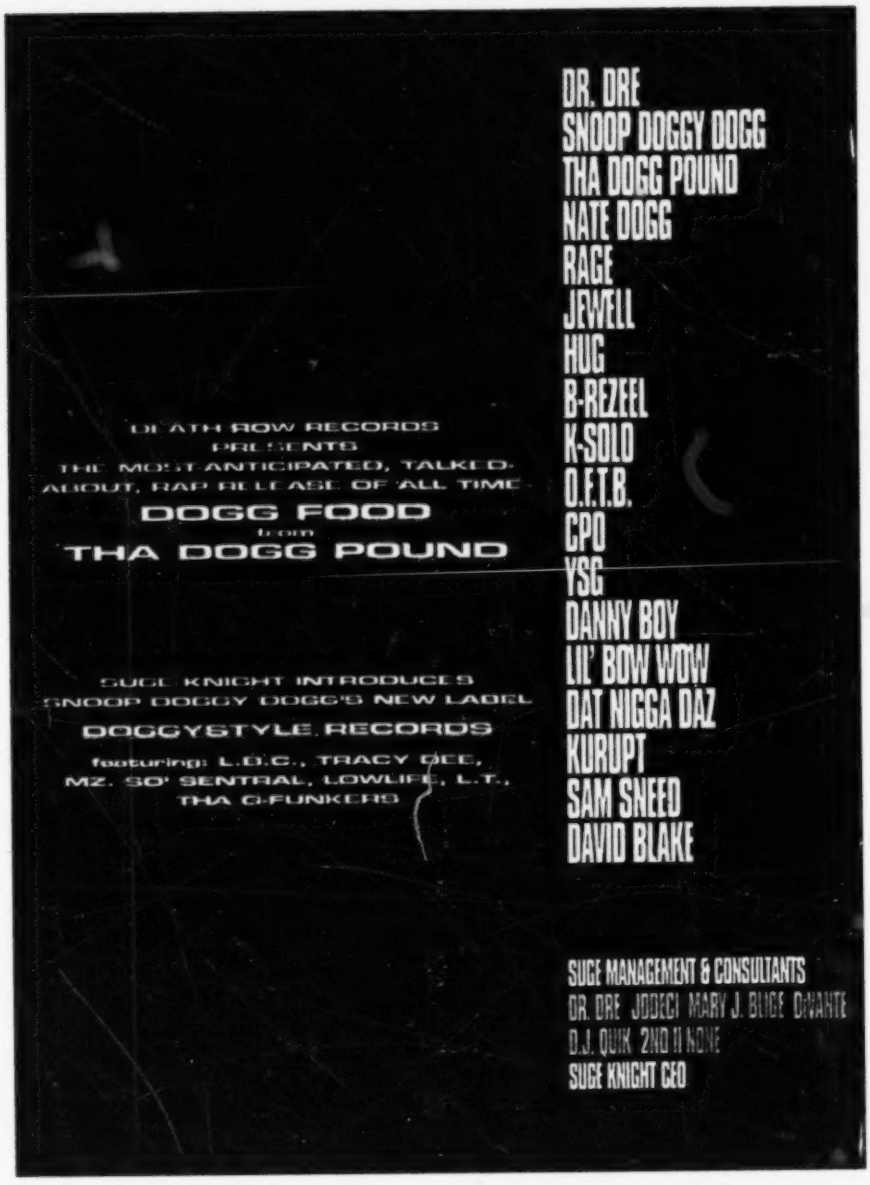
DR. DRE
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NATE DOGG
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JEWELL
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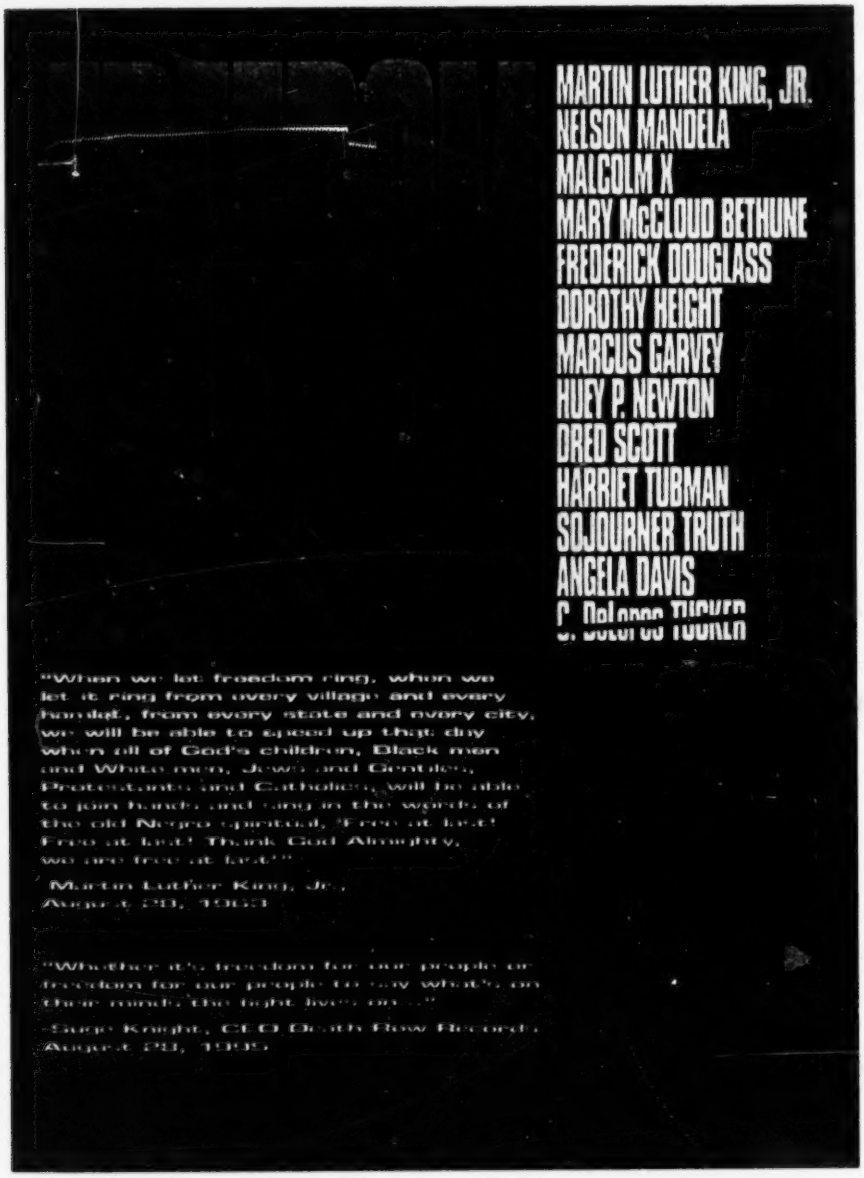
B-REZEEL
K-SOLO
O.F.T.B.
CPO
YSG
DANNY BOY
LIL' BOW WOW
DAT NIGGA DAZ
KURUPT
SAM SNEED
DAVID BLAKE
DEATH ROW RECORDS
PRESENTS
THE MOST ANTICIPATED, TALKED-
ABOUT, RAP RELEASE OF ALL TIME
DOGG FOOD
from
THA DOGG POUND
SUGE KNIGHT INTRODUCES
SNOOP DOGGY DOGG'S NEW LABEL
DOGGYSTYLE RECORDS
featuring: L.B.C., TRACY DEE,
MZ. SO' SENTRAL, LOWLIFE, L.T.,
THA G-FUNKERS
SUGE MANAGEMENT & CONSULTANTS
DR. DRE JODECI MARY J. BLIGE DWANTE
D.J. QUIK 2ND II NONE
SUGE KNIGHT CEO


MARTIN LUTHER KING, JR.
NELSON MANDELA
MALCOLM X
MARY McCLOUD BETHUNE
FREDERICK DOUGLASS
DOROTHY HEIGHT
MARCUS GARVEY
HUEY P. NEWTON
DRED SCOTT
HARRIET TUBMAN
SOJOURNER TRUTH
ANGELA DAVIS
"When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, Black men and White men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, 'Free at last! Free at last! Thank God Almighty, we are free at last!'"
Martin Luther King, Jr.,
August 28, 1963
"Whether it's freedom for our people or freedom for our people to say what's on their minds, the fight lives on..."
-Suge Knight, CEO Death Row Records
August 28, 1995

31 July 1997

Dr. C. Delores Tucker Files $Multi-Million Suit
Against Record Producers of Gangsta Rap 'Filth'

Suit Targets Death Row, Interscope Records, Ted Field,
Time Warner, Others For Personally Defaming Her!

For Immediate Release

For Further Information, call
Chester A. Higgins, Sr. 202/387-4852

Washington, DC--
C Delores Tucker whose organization, the National Political Congress of Black Women, Inc. (NPCBW) has waged an on-going battle against the recording industry and its use of misogynous, sexist, racist and pornographic lyrics targeting the nation's children in gangsta rap music, has filed a multi-million dollar suit directed at the heart of the gangsta rap music in the US.

The suit was filed in the US District Court for the Eastern District, Philadelphia, Pa., by Angino & Rubner, a prominent law firm in Pennsylvania. Dr. Tucker's husband, William, a well known businessman, joins her as a plaintiff in the suit.

It names Tower Records, of Philadelphia, Interscope and Death Row Records, Inc., of Los Angeles California, Ted Field, an official of Interscope, the giant entertainment corporation Time Warner; the estate of the late Tupac Shakur and others, in a sweeping defamation of character litigation.

In a statement, Dr. Tucker, the NPCBW founder/chair, pointed out that "Shakur's Death Row Records, his next to last album, "All Eyez On Me," specifically defamed me in a most degrading way. It called me a personal obscenity... for fighting against this music. And I feel that those who produce, and promote this recording all over the world are equally guilty of defamation.. If I should win this suit, I will use the money to help create a healthy and vigorous climate in which our rap, hip hop and other artists can flourish and grow in healthy, productive ways and not be enslaved to this greed-driven, race driven, porno driven, grossly sexist lyrical filth that particularly defames Black women., promotes drug use, violence and panders pornography to our children."

" I am not opposed to hip hop or rap music that merely chronicles the pain, crime and degradation of some of African America's most devastated communities. Indeed, most rap and hip hop artists are highly talented and produce some of the world's most distinctive music.. But I am against the executives and publicists who administer "gangsta rap", produce and circulate it all over the world, using vile, demeaning lyrics, encouraging and abetting some of their more aggressive artists in personally defaming their critics."

BEST AVAILABLE COPY

"It is the gangstas in the suites, not those in the streets that I am after. They hide behind the First Amendment while abdicating their personal and corporate responsibility "

Acknowledging for the first time that she has received death threats during her long crusade against gangsta rap lyrics, and that some industry operatives have been prying into her private affairs "seeking dirt to demean me," she declared: "I am not unmindful of the risks to my life that I take in filing this action. However, I am even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if I do not say, as I am saying to this industry--"STOP NOW!"

In August, 1995, Interscope Records filed suit against Dr. Tucker in California charging her with inducement to "breach the contract between Death Row and Interscope Records." She vigorously denied the charge and asserted Interscope brought the charges in an attempt "shut me up and force me to discontinue " NPCBW's crusade against the industry's offensive gangsta rap lyrics.

She said since the suit was filed, she has been subjected to hours of depositions, suffered, surveillance and intimidation, emotional stress, received death threats, causing her "reasonable fear" for her life because violence and death play a central role in the gangsta rap arena, noting that two prominent murders have been reported since the unsolved murder in September 1996 of Tupac Shakur, all of which adversely affects her ability to travel freely without fear..

Dr. Tucker is former Secretary of State of the Commonwealth of Pennsylvania, a first at that time for a woman and a Black, and a former chair of the Democratic National Committee Black Caucus. She is a Board member of the NAACP, and the president of the Bethune DuBois Institute.

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1 MAY 1998

MEDIA FAX NUMBERS

DISTRICT	
AFRICAN-AMERICAN	
Afro-American	202/ 939-7461
CAPITOL SPOTLIGHT	745-7860
PRINCE GEORGES POST	301/627-8147
NNPA	588-5029
THE METRO HERALD	540/587-4230
WASHINGTON INFORMER	574-3785
WASHINGTON SUN	882-9817
WASHINGTON NEW OBSERVER	232-1711
JET MAGAZINE	638-4753
NEW YORK AMSTERDAM NEWS	212/ 222-3842
WOL (RADIO)	410/752-2252
PHILA. NEW OBSERVER	215/665-8514
PALM BEACH GAZETTE	561/844-5551
MICHIGAN CHRONICLE	313/963-8788
LEE BAILEY COMMUNICATIONS	213/969-8474

WHITE MEDIA (District)

JUL-19-98 SUN 11:38 CHESTER A. HIGGINS, SR. FAX NO. 2023867095 P. 06

AP	776-9570
UPI	301-577-3689
C-SPAN	737-3323
CNN	898-7565
KNIGHT RIDDER	628-4142
USA TODAY	703/558-3935 or 276-65 85
NEW YORK TIMES (local)	862-0340
WASHINGTON POST	334-4475
WASHINGTON TIMES	529-2471
REUTERS	898-8383
US NEWS & WORLD REPORT	955-2049

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19 July 1998

P.S. This is the FAX List I always use. I merely sent Dr. Tucker another copy of it on the above date.

- Chester

681ST STORY of Level 1 printed in FULL format.

Copyright 1997 Times Mirror Company
Los Angeles Times

August 1, 1997, Friday, Home Edition

SECTION: Business; Part D; Page 1; Financial Desk

LENGTH: 541 words

HEADLINE: COMPANY TOWN;
RAP CRITIC SUES SHAKUR'S ESTATE FOR DEFAMATION

BYLINE: CHUCK PHILIPS, TIMES STAFF WRITER

BODY:

C. DeLores Tucker, who built a national reputation criticizing the violent and lewd lyrics of gangsta rap, has found a new and personal objection to rap lyrics.

Tucker, in a lawsuit filed this week in Philadelphia federal court, contends that Tupac Shakur's estate should pay her $ 10 million because lyrics on a 1996 album made derogatory references to her. Among other things, the lawsuit says, the anguish caused by those lyrics cut down on her sex life with her husband.

According to the lawsuit, defamatory lyrics contained on Shakur's "All Eyes on Me"--a double CD that has sold nearly 5 million copies--have caused Tucker to undergo "great humiliation, mental pain and suffering." The lawsuit contends that Tucker's injuries have caused her husband, William, to "suffer a loss of advice, companionship and consortium."

Tucker, who became a national figure three years ago because of her outspoken criticism of rap music, could not be reached for comment. Neither could Afeni Shakur, who is named as a defendant in the lawsuit as administrator of her son's estate.

Richard Fischbein, a New York attorney who is co-administrator of the estate, said he is baffled by the allegations.

"It's hard for me to conceive how these lyrics could destroy her sex life," Fischbein said. "But we can only wait for the proof to be revealed in court."

In addition to Afeni Shakur, the lawsuit names Death Row Records, Interscope Records, Time Warner, Seagram Co., Tower Records and seven other individuals and entities as defendants.

The lawsuit accuses Shakur's estate and the others of slander, infliction of emotional distress and invasion of privacy.

According to the lawsuit, Tucker and her husband take particular offense to "lewd" and "indecent" references to her in two songs entitled "Wonda Why They

Los Angeles Times, August 1, 1997

Call U Bytch" and "How Do U Want It." In a song that the lawsuit says alludes to prostitution, Shakur's lyrics state: "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

Tucker, head of the Washington-based National Political Congress of Black Women, is described in the lawsuit as a "moral and religious daughter of a well-known, respected Philadelphia minister."

Tucker and former U.S. drug policy advisor William Bennett launched an anti-rap campaign in 1994 that pressured Time Warner to dump Interscope, the Westwood company that distributes such Death Row artists as Shakur, who was murdered in September, and Snoop Doggy Dogg.

The two rap critics have also criticised Seagram-owned Universal, Bertelsmann, Sony Corp., Thorn-EMI Music and PolyGram for releasing "pornographic smut" music.

Tucker, whose credibility has been challenged by accusations that she once profited from ownership of slum properties in Philadelphia, has been entangled in a legal battle with Death Row and Interscope for the last two years.

Civil lawsuits filed in August 1995 by Death Row and Interscope accused Tucker of contractual interference and suggested she had an economic motive for criticizing rap.

Tucker's lawsuit contends that Shakur's lyrics have "held her up as an object of scorn to more than 5 million people, including children in Philadelphia and elsewhere."

LANGUAGE: English

LOAD-DATE: January 29, 1998

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617TH STORY of Level 1 printed in FULL format.

Copyright 1997 Daily News, L.P.
Daily News (New York)

August 05, 1997, Tuesday

SECTION: Gossip; Pg. 14

LENGTH: 991 words

HEADLINE: STREISAND WON'T BE MARCHING DOWN THAT ISLE

BYLINE: BY GEORGE RUSH AND JOANNA MOLLOY

BODY:
So much for Barbra Streisand's Saturday wedding. As you know, the rumored location of the diva's rumored wedding had moved from Malibu to Block Island, off Rhode Island. Word was that Streisand and beau James Brolin had reserved a lot of rooms at a hotel even though the hotel denied the wedding party's name was Streisand.

But now comes word on the Internet's Drudge Report that Streisand's pals, Bill and Hillary Clinton, had plans to visit Block Island on that very date. The White House confirms that the First Couple had talked about stopping at Block Island on Aug. 9 on the way to their Martha's Vineyard vacation. A Clinton spokesman tells us they've postponed the stop till Aug. 17. The spokesman couldn't say why they were visiting Block Island, but added, "I haven't heard anything about them attending any weddings."

A source close to Streisand says that she and Brolin do plan to wed, but "not any time in the near future."

RAP'S COURT RECORDS

Sure, it has produced some searing portraits of ghetto life. But the most enduring legacy of hip hop may turn out to be the pile of litigation it has generated. Here's a sampling of the def, dope and phat lawsuits now being played out in court:

Gangsta-rap foe C. DeLores Tucker filed suit last week in Philadelphia against the estate of Tupac Shakur. The activist, who's seeking $ 10 million, claims the slain rapper defamed her on his album "All Eyez on Me." She also claims his songs one of which said she had "her legs up trying to get rich" traumatized her to the point of ruining her sex life with her husband.

Tucker may have to get in line. William Garland, Shakur's biological father, wants half of his son's estate, which is estimated at more than $ 20 million. The case went to trial yesterday in L.A. Lawyers for Tupac's mother, Afeni, argued that Garland is an opportunist who disappeared from his son's life until he saw there was money to be made.

Then there's Jacquelyn McSealey, the woman who was shot and paralyzed at an Arkansas nightclub where Shakur played in 1993. McSealey sued Shakur's estate

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Daily News (New York) August 05, 1997, Tuesday

and won $ 16.6 million. Lawyers for the estate are due to file an appeal tomorrow.

In addition, the managers of platinum-selling R & B group Dru Hill have sued Island Records in Washington, D.C. They want to dissolve Dru Hill's contract with Island. The band itself is already trying to break the deal here in federal court. They've charged that an Island Black Music exec and his bodyguard beat up a lawyer and manager for Dru Hill at an Atlanta nightclub. An Island spokesman calls the allegations "outrageous, attention-seeking and completely untrue" and notes that a state judge in Georgia refused to issue an arrest warrant for Island Black Music President Hiriam Hicks and his brother, Josh, who have been implicated in the incident. A spokesman for Atlanta prosecutors says, however, that the charges are still under investigation.

RULES OF THE GAME

The city's Parks Department has managed to crush an event that would benefit kids, street-basketball players and women film makers at the same time.

The makers of "Soul in the Hole," a documentary about the unbeatable Kenny's Kings Brooklyn hoops team shooting their way to victory, wanted to celebrate the release of the movie this week with a game.

Kenny's Kings were going to play an all-star team featuring top NYU scorer Charles Jones.

They set the game for Houston St. and Sixth Ave.

Parks Dept. officials demanded producers get a million-dollar insurance policy. They did.

Parks Dept. officials also demanded they open the guest list of 300 to include the public. They did.

Parks Dept. officials demanded that the organizers arrange security for the crowd the rap performers might attract. They did.

Struggling producer and director Lillibet Foster and Danielle Gardner say the Parks Dept. gave the verbal go-ahead early in July but on Friday, Special Events director Deborah DeGregorio backed out.

DeGregorio wrote that the basketball game "is not appropriate for the site" a basketball court. Huh?

"They weren't upfront with us about the over-the-top nature of the event," said Parks Dept. spokesman Craig Kmiecsko. "They planned on music acts that would draw 3,000 to 4,000 people."

Foster mourned, "It would've been a great thing for the kids." "Soul in the Hole" opens Friday at the Village East.

ITEMIZING

Developer Lev Rudin took sick at a business breakfast yesterday. The

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Appendix

Daily News (New York) August 05, 1997, Tuesday

78-year-old New York booster was shushed out by a doctor. "He's fine," said his aide, Lori Barclay . . .

Fresh hell for rogue trader Nick Leeson. The fallen financier, who is serving six and half years in a Singapore prison for his role in the 1995 crash of Barings Bank, is reportedly about to get hit with divorce papers. Lisa Leeson, 29, stood by her husband through his trial. But the London-based Lisa hasn't visited him since early last year about the time that Nick admitted in his autobiography that he did more than his share of tomcattin' during their six-year marriage . . .

Mira Sorvino, Nicole Kidman and Madonna are all scrambling for the rights to Douglas Carter Beane's "As Bees in Honey Drown," Mr. Showbiz reports . . .There is life after Madonna: Carlos Leon is about to star in "Chacho" with John Leguizamo. . . .

The birthday party was for Lynn Hirschberg, the reporter whose New York Times Magazine piece on Jamie Tarses may still get the ABC exec fired. But she could blame comedian Conan O'Brien, designer Helmut Lang, Miramax chief Harvey Weinstein and media-exec Peter Kaplan, Adam Moss and Philip Weiss if they took their eyes off the guest of honor? That's what you get when you invite Julia Roberts. The Thursday bash, at the home of publishing heir Jonathan Newhouse, also had plenty of chilled champagne courtesy of David Letterman, who may want to stay in Hirschberg's good graces.

Notes: http://www.nextnewyork.com

GRAPHIC: THIS ZINGERMAN DAVID ALLEN COMBS ANNAK H. RAHJI GINNE SCHE SKIN: Skin-care billionaire Ronald Perelman veiled on the skins (above) and pressed the flesh of Theresa Hicks (left) at a party to benefit Southampton Hospital Saturday night. (Perelman's spokesman denies talk that Hicks is his latest blond love interest.) Earlier that day, Cindy Crawford and Rande Gerber (above, r.) tried out the family thing with Gerber's niece Chase at Bridgehampton Polo. And Jerry Seinfeld's ex-girlfriend Shoshanna Lonstein played bloob that pass with new boyfriend Jay Aaron (r.) at Jet East.

LOAD-DATE: August 06, 1997

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Appendix

444TH STORY of Level 1 printed in FULL format.

Copyright 1997 Gannett Company, Inc.
USA TODAY

August 4, 1997, Monday, FINAL EDITION

SECTION: LIFE; Pg. 3D

LENGTH: 231 words

HEADLINE: Lawsuits go after Shakur estate

BYLINE: Arlene Vigoda

BODY:
The estate of gangsta rapper Tupac Shakur is under attack.

Anti-gangsta rap activist C. DeLores Tucker filed suit in Philadelphia last week, asking for $ 10 million from the slain rapper's estate. She claims two songs on his album All Eyes on Me made derogatory references to her. Tucker alleges that the anguish caused by Shakur's lyrics diminished her sex life with her husband. In one song the lyrics say, "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

Also, William Garland, Shakur's biological father, is suing for half of his son's estate, estimated at more than $ 20 million. That case will go to trial today in L.A.

"It's ridiculous," says attorney Richard Fischbein, co-administrator of the estate. "Even though he was a nonexistent, deadbeat dad, he thinks he's entitled to collect money."

And a woman who was shot and paralyzed at a Arkansas club where Shakur was performing sued and won a judgment against the estate for $ 14.4 million. Shakur's lawyers plan to file an appeal Wednesday.

Says Fischbein: "Afeni (Shakur's mother and administrator of the estate) will not settle. She'd rather fight and lose than pay one cent to any of these pirates."

Shakur was shot as he rode in a car near the Las Vegas Strip Sept. 7. He died six days later at a local hospital.

GRAPHIC: PHOTO, B/W, AP

LANGUAGE: ENGLISH

LOAD-DATE: August 04, 1997

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Appendix

453RD STORY of Level 1 printed in FULL format.

Copyright 1997 The Baltimore Sun Company
The Baltimore Sun

August 2, 1997, Saturday, FINAL EDITION

SECTION: FEATURES, Pg. 2D, People And Places

LENGTH: 594 words

HEADLINE: Foe of gangsta rap claims it undermined her conjugal relations

SOURCE: From wire reports

BODY:
One of America's most outspoken foes of gangsta rap says Tupac Shakur's crude lyrics about her have wrecked her sex life.

C. DeLores Tucker sued Shakur's estate for $ 10 million this week in federal court in Philadelphia, saying the slain rapper's 1996 double CD "All Eyes on Me" caused her "great humiliation, mental pain and suffering."

She said the anguish caused by Shakur's sexual references to her have undermined her sex life with her husband.

Richard Fischbein, co-administrator of Shakur's estate, said, "It's hard for me to conceive how these lyrics could destroy her sex life."

'Friends' can cost you, a network learns

"Friends" will be there for NBC -- but it will cost the network nearly $ 4 million per episode, sources say.

The network confirmed that it has negotiated a deal with Warner Bros. TV to secure broadcast rights to the show through season No. 6, or 1999-2000. The current contract would have run out at the end of this coming season.

Meanwhile, creator-producers Marta Kauffman, Kevin Bright and David Crane are said to be on board for the show's six-year duration through their lucrative deals with WBTV and NBC, though they are now dividing their time between "Friends" and their new NBC sitcom, "Veronica's Closet."

John F. Kennedy Jr. throws aviation fans for a loop

People at an aircraft convention were flying high after John F. Kennedy Jr. dropped in.

Kennedy, a self-described "lapsed pilot," toured the Experimental Aircraft Association Fly-In Convention Thursday in Oshkosh, Wis., drawing more attention than the antique planes and daredevil acrobats in flight.

"It's like a dream come true," said a gasping Jean Jovaag, 69, who met Kennedy's father 37 years ago.

The Baltimore Sun, August 2, 1997

Kennedy, 36, said he's long been fascinated with flying. "Must have been all those helicopters landing on the front lawn," he said of his boyhood in the White House.

Japan's oldest twins celebrate their 105th year

Japan's oldest twin sisters turned 105 yesterday, receiving rides through a forest on covered litters and helping volunteers plant trees in the mountains west of Tokyo for their birthday party.

Kin Narita and Gin Kanie -- affectionately known as "Kin-san and Gin-san" -- released gold and silver carp into a lake. Their names sound like "gold" and "silver" in Japanese, and carp are national symbols of strength and perseverance.

In a brief appearance before 1,500 people, the sharp-witted seniors sang and answered questions, including one from a young girl about their love lives. The sisters, both single, said neither had a crush on anyone at the moment.

Roger Corman hijacks plot of 'Air Force One'

Just when you thought the skies were safe after Harrison Ford took them over last weekend, here comes Roger Corman's "Vatican Air Two."

Hearing about the plot of "Air Force One," the legendary producer-director immediately ordered writer Craig Hovius to script a parody in which a muscular pope, once a martial arts champ at the seminary, pulverizes terrorists who hijack his private jet.

"If I get a big star and co-financing, I'll spend around $ 4 million," Corman said. "If not, I'll get a good comedian and make it for around $ 2 million. Either way, I'm going to make this movie."

Today's birthdays

Actor Carroll O'Connor is 73. Actor Peter O'Toole is 65. Movie director Wes Craven is 58. Actress Joanna Cassidy is 53. Actress Kathryn Harrold is 47. Actress Victoria Jackson is 38. Actress Cynthia Stevenson is 36. Actress Mary-Louise Parker is 33. Actor Edward Furlong is 30.

King-sized

GRAPHIC: PHOTO, Artist Benn Zaricor of Atlanta puts finishing touches on his vinyl work at the Memphis College of Art to mark the 20th anniversary of Elvis' Aug. 16 death.

TYPE: CATCH LINE

Pub Date: 8/02/97 COLOR

LOAD-DATE: August 5, 1997

Citation 8/2/97 WASHPOST C03 8/2/97 Wash. Post C03 1997 WL 11977035
Rank(R) R 247 OF 396
Database ALLNEWS
Mod Pag
(Publication page references are not available for this document.)
The Washington Post
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Saturday, August 2, 1997

Style

Names & Faces
Compiled from staff and wire reports by Dana Hull

Not-in-the-Hood Music?

Activist C. DeLores Tucker, head of the National Political Congress of Black Women, has sued the estate of slain rap artist Tupac Shakur, saying his lyrics slandered her and damaged her relationship with her husband of more than 40 years, William Tucker.

Tucker and former U.S. drug policy director William Bennett campaigned to stop the distribution of violent and graphic "gangsta" rap and rock lyrics. She sued Shakur's estate for $10 million earlier this week in Philadelphia, claiming that Shakur's 1996 CD "All Eyez on Me," which contains derogatory and sexual references to her, caused her "great humiliation, mental pain, and suffering" and contributed to loss of her husband's "[illegible]."

"[illegible]" to conceal how these lyrics could destroy her sex life," said Richard Fischbein, an attorney who oversees Shakur's estate.

Bye-Bye, 'B&B'

Beavis and Butt-head, MTV's animated teenagers, have been given the ax.

The last original episode of "B&B" is scheduled to air Oct. 10. MTV and the cartoon's creator, Mike Judge, agreed to call it quits after a four-year run.

"We've always had a great relationship with Mike Judge, but after 230 episodes, we decided it was time to move on," said MTV spokeswoman Sheryl Jones.

O.J. Loses the Piano

O.J. Simpson's piano was hauled out of his home in Los Angeles yesterday. Fred Goldman had the $20,000 Yamaha grand collected as part of the effort to satisfy the $33.5 million judgment against Simpson in

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(Publication page references are not available for this document.)
the 1994 deaths of Goldman's son, Ron, and Nicole Brown Simpson.

Goldman is also trying to get a $40,000 Ford Expedition that was presented to Simpson last month in honor of his 50th birthday. A hearing is scheduled for next week on who will get to keep the two items.

Simpson said the piano was a gift to his mother, Eunice, and that she plays it when she visits his home.

"I haven't fought them about anything that belongs to me, but this belongs to my mother," Simpson said.

Although Simpson was acquitted of criminal murder charges, a civil trial earlier this year found him liable for the two deaths.

Randall's Flea

Philadelphia Mayor Ed Randall was the big attraction at a rally Thursday sponsored by the National Association to Advance Fat Acceptance (NAAFA). Randall told the crowd that on his last visit to a local movie theater he discovered that the seats were too small.

"I thought, 'Wouldn't it be a great idea to have large seats to accommodate everyone?' "

Members of NAAFA, formed in 1969, don't believe in dieting and focus on making sure that overweight people have equal rights.

"What you are fighting against is as discriminatory as anything else," Randall said. "The hurt, the prejudice and discrimination that you face is every bit as real."

Here's Looking at Him

The Humphrey Bogart 32-cent postage stamp was unveiled this week in Los Angeles. Actress Lauren Bacall, Bogart's widow, presided over the Hollywood Boulevard ceremony.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

CAPTION: Mike Judge, above, wrapping up; Simpson's piano, rolling out.

---- INDEX REFERENCES ----

KEY WORDS: FUN & GAMES

EDITION: FINAL

Word Count: 492

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Citation | Rank(R) | Database | Mode
9/1/97 JETMAG 62 | R 194 OF 396 | ALLNEWS | Page
9/1/97 Jet 62
1997 WL 9173794
(Publication page references are not available for this document.)
Jet

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Monday, September 1, 1997

Vol. 92, No. 15, ISSN: 0021-5996

C. Delores Tucker files $10 million lawsuit against Tupac Shakur's estate.

Dr. C. Delores Tucker, an outspoken critic of gangsta rap, has filed a $10 million lawsuit against the estate of the late rapper Tupac Shakur charging that he made derogatory comments about her in his music.

Dr. Tucker, chair of the National Political Congress of Black Women Inc., says songs on Shakur's hit album All Eyez On Me have caused her "mental pain, suffering and inconvenience."

The suit also notes because of Shakur's music, Dr. Tucker has "suffered severe emotional distress including, but not limited to, feelings of fright,, shock, humiliation and outrage."

On the tune Wonda Why They Call U B------h Shakur raps: "Get your legs up trying to get rich. Keep your head up and your legs closed Dear Ms. Delores Tucker." Dr. Tucker states in the suit that the lyrics allude "to prostitution and tells why women are called bitches."

On the tune How Do You Want It Shakur raps: "C. Delores Tucker .... instead of trying to help a brother you destroy a nigga."

The suit filed jointly by Dr. Tucker and her husband, businessman William Tucker, states that Mr. Tucker "as a result of his wife's injuries, suffered a loss of advice, companionship and consortium."

The suit, which alleges intentional infliction of emotional distress, slander and invasion of privacy, was filed in the U.S. District Court for the Eastern District, Pennsylvania. It also names Tower Records of Philadelphia; Interscope and Death Row Records of Los Angeles; Ted Field and James Iovine, officials of Interscope, Time Warner, Seagram Co., MCA Inc. and others.

Dr. Tucker said in a press statement that Shakur's album All Eyez On Me, released in 1996, "specifically defamed me in a most degrading way. It called me a personal obscenity ... for fighting against this music. And I feel that those who produce and promote this recording all over the world are equally guilty of defamation."

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(Publication page references are not available for this document.)
She added, "Not only have I been defamed, I feel thousands of young women have been defamed by this greed-driven, race-driven and drug-driven music. This sexist lyrical filth particularly defames Black women, promotes drug use, violence and panders pornography to children," she stated.

Shakur was killed in a drive-by shooting in Las Vegas last year (Jet, Sept. 30, 1996).

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

photograph illustration

---- INDEX REFERENCES ----

NAMED PERSON: C. DELORES TUCKER

KEY WORDS: RAP SINGERS

Word Count: 373
9/1/97 JETMAG 62
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The Philadelphia Tribune

Tucker: Media distorts lawsuit

Husband defends wife's complaint

By Bennet Wright
and Dwayne Anderson
Tribune Staff

The husband of C. DeLores Tucker said yesterday that the record industry and media have distorted a multi-million-dollar lawsuit discussed at the heart of the gangsta rap crusade in the U.S.

Well-known businessman William Tucker [illegible] his wife at a plaintiff in [illegible] Philadelphia [illegible] Court, seeking the return of Tupac Shakur and others in a sweeping defense of Constitutional liberties, alleging [illegible] infraction of unrelated diseases, slander and invasion of privacy.

The Tuckers are asking for $10 million in the suit.

"It is the gangsta in the suits, not those in the streets that I am after," C. DeLores Tucker said. "Only idiots behind the First Amendment while defending their personal and corporate responsibility."

She left a Philadelphia area hospital yesterday and is recovering from exhaustion and dehydration caused by a recent rally in South Africa. Her husband checked her out of the hospital and said she is "fine" and on her way back to Washington.

According to the lawsuit filed last week, Shakur's "All Eyez on Me" — a 1996 double CD that sold nearly four million copies — caused C. DeLores Tucker "great humiliation, mental pain and suffering." It also said the injuries

(Continued on Page 9-A)

C. DeLores Tucker's husband defends her

(Continued from Page 1-A)

named her husband, William, in "suffer a host of ailments, sleeplessness and emotional distress."

The premise of the lawsuit was widely reported, and widely misinterpreted, according to William Tucker.

"The way the media distorted this is ridiculous," he said during a telephone interview with the Tribune yesterday. "My wife has never spoken to anyone in the media about our private or personal life but that's the way they tried to project the story."

He said the suit was filed nearly two weeks ago and "someone in the record industry" phoned up on the suit and put their own version on the thing.

"This lawsuit is not about Tupac or his estate," said William Tucker. "We had to include him. He is the one who dedicated her. This is not about my personal life or me. It's about holding the record industry accountable and responsible for their conduct and for their practices and their policies toward Black people.

"The focus of the lawsuit is homicide, sexual crimes, harassment and intimidation. That's what the lawsuit is all about," he said. "All the other nonsense they have tried to project is fiction."

William Tucker said he did not mind being included in the lawsuit because "anyone anyone murdered my wife, it affects and harms me personally."

Pointedly asked how the Tuckers could afford his son Bill, he said, "That's just a total unknown [to the lawsuit] — a small part of it. We have to represent the situation as accurately as we can and the only way to experience it is to have it happen to you."

Helen Little, the operations manager and a D.J. at Power 99, said she hopes the suit doesn't create long-term problems for the Tuckers.

"Whatever the outcomes of the suit, I am sure it will be very interesting, I won't say how a parent's name in a song would affect your own life since I have never had my name mentioned in a song," said Little.

Jerry Wells, long time D.J., production and creative manager for WDAS FM/AM stations, said he doesn't think "censorship" young artists in the suburbs.

"I thought this was some sort of slander thing, but I know what song that they are talking about. But I wasn't aware that they are making changes. The older generation has to understand that the music they consider insulting, the same the younger generation embraces it," he said.

Daryl Trent, general manager of WPHI 103.9 FM, added that, "Mr. Tucker has a right to do what is necessary if the facts her name is being slandered. When you lawsuit city type of attack on a person publicly, then person has the right and responsibility to redress that attack."

The suit named Tower Records of Philadelphia, Interscope and Death Row Records Inc. of Los Angeles, Ted Field and James Iovine, officials of Interscope, entertainment attorney Jeffrey Weinberg, Seagrams Co. and MCA Inc.

C. DeLores Tucker's Harrisburg attorney Mahlon C. Angley did not return calls yesterday.

Richard Fredricks, a New York attorney who is co-administrator of Shakur's estate, said he was baffled by the suit.

"It's hard for me to associate how these ideas could destroy her son's life," Fredricks said. "But we can only wait for proof to be presented in court."

C. DeLores Tucker, the founder of the National Political Congress of Black Women Inc. (NPCBW), which has waged an on-going battle against the recording industry and what she has called subliminal, crude, racist and pornographic lyrics targeting the nation's children in gangsta rap records, earlier filed a multi-million-dollar suit directed at the heart of the gangsta rap crusade.

Two of the defendants, Interscope Records and Death Row Records Inc., filed countersuits of their own against Tucker, charging her with defamation in lawsuits she announced between Death Row and Interscope.

In their suit filed last week, the Tuckers claimed Interscope and Death Row Records knew the kid drama on each thing, and that they filed over records only to drive her record against gangsta rap records.

C. DeLores Tucker said since the NPCBW suit was filed, she has been subjected to hours of depositions, unlisted surveillance and intimidation, murdered crime, murdered death threats, causing her "irreversible fear" for her life because violence and death play a central role in the gangsta rap crime.

She noted that two prominent enemies have been reported since the murdered murder in September 1996 of Tupac Shakur, all of which adversely affects her ability to travel freely without fear.

In a statement, C. DeLores Tucker pointed out that "Shakur's Death Row Records, next to the last album, 'All Eyez on Me,' specifically delivered me in a most degrading way. It called me a personal adversary ... for fighting against the crude. And I feel that those who produce, and promote this crumbling all over the world are equally guilty of defamation. Not only have I been defamed, I feel thousands of young women have been defamed by the greed-driven, mercenary and degradation made. This order [plus] [illegible] that particularly defames Black women, promotes drug use, violence and promotes pornography to children."

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SOME VERY DECENT KIDS DIG TRASH RAP
Philadelphia Daily News
(DN)
- Wednesday, August 6, 1997
By: Elmer Smith

Edition: PM
Section: LOCAL
Page: 11
Word Count: 844

TEXT:
It was billed as a showdown between hip-hop icon KRS-One and Anti-gangsta rap crusader C. DeLores Tucker. But the wiley Mrs. Tucker had a better idea.

At least it seemed like a better idea at the time. She'd challenge one of the scores of teens in the audience to come up on stage and read the lyrics of one of Lil Kim's trashiest raps without stumbling over any obscenities. Her $20 wager seemed like a good bet considering her audience at the NAACP convention last month in Pittsburgh. You couldn't find a more clean-cut bunch of young people at a Sunday school picnic. But her bet almost set off a stampede. Jermair Stroud, 17 of Richmond, Va., outsprinted two other teens to reach the dais first. Stroud, reading from a transcript, showed little embarrassment at first, even sandwiched between Tucker, who stood right behind him, and an audience that included some appalled adults.

Finally, he got to a passage that stopped him in mid-sentence. But it didn't stop dozens of kids in the audience who began to chant along with Stroud without reading from a script. Lil Kim's lyrics were far filthier than the trash we used to talk when I was in the Army, replete with passages glorifying oral and anal sex for fun or profit, and advocating the use of drugs during sex. No Time'' by Lil Kim and Call Me'' by Lil Kim & Too Short feature lyrics urging young girls to do anything you can think of'' with any man who wants it, as long as you get paid or it feels good. Parents who say they don't mind their daughters hearing this stuff or being characterized in this way probably haven't stopped long enough to listen. I'll gladly send a copy of the lyrics I got off the Internet to any parent who doesn't believe me. But C. DeLores Tucker lost her bet in Pittsburgh because these teens, as decent as they were, literally thought nothing of it. And that's where the danger lies.

The thoughtless repetition of this kind of filth can have a subtle effect on the most decent kids because it tells them that anything that makes you feel good or you can get paid for is OK. Decent kids may never do what these lyrics advocate. But it's hard to believe impressionable young people can repeatedly mouth these mantras without it affecting their sexual outlook.

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I happen to like most rap. And I am not for banning anything, not even Lil Kim's degrading garbage or the more offensive glorification of violence by a relatively few hard-core gangsta rappers. But as long as seemingly respectable firms like Seagrams and Sony pocket the profits, I support C. DeLores Tucker or little Tommy Tucker or anyone else who has the guts to stand up to them. But I also appreciate how some people felt betrayed when she filed a $10 million suit that has trivialized her and her movement. For a week now, even some of her most consistent supporters have been questioning her motives and snickering over the suit's allegation that her sex life has been ruined by a couple of Tupac Shakur raps. Bill Tucker told me his wife was too stressed out over the controversy to comment yesterday. But he had plenty to say.

"Everybody wants to focus on that, as if this is about sex or money," said Tucker. "That's the spin out of Hollywood. But it's a total distortion."

"First off the suit is not just against Tupac. It's against Seagrams and MCA and Death Row and everybody else involved in exploiting these artists. She's been at this for three years. If she was in it for money, she has had plenty of chances. Every time she meets with these big companies, the first thing they ask her is what she wants.

". . . If any money comes of it, my wife has always said she wants to do something to undo the harm this has caused, especially to the image of young black men. It's not about money. My wife hasn't had a paycheck since 1977 (when she was Pennsylvania Commonwealth secretary). But she gave $12,000 to help save the Martin Luther King Center."

On the more delicate issue of how the insults on two Tupac Shakur rap releases have affected their sex life, Tucker said, "You live through something like this, it affects everything about you.

"These raps are literally calling her a prostitute, describing her with her legs up in the air. When she's in a train station, a record store or anywhere, we see people hunch each other and point."

That may be. But I would have felt better if the suit had been filed on behalf of the movement she has helped spawn or if she had issued a statement saying what she'd do with the money. Instead the focus is back on her. And those who ignored the cause because they didn't trust her have found a convenient excuse.

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DESCRIPTORS: OPINION MUSIC

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Music News Of The World

-- Aug 11, 1997 --

Edited by Michael Goldberg

Headlines: Aug 11, 1997

- Fans Tune In As Radiohead Turns Up The Volume
- UPS Walkout Hits Music Fans Where It Hurts
- Fleming Lips Latest Experiment To Go Boom!
- ATN Album Review: Maggie Estep's Love Is A Dog From Hell
- Juliana Hatfield Labors Over More 'Mature' Work
- "Question of the Day": Phishing For Trouble?
- $10 Million Defamation Suit Targets Tupac, Rap Labels
- ATN Feature: Orbital Landing In U.S.
- R 'N' R Three Dot: Jane's Addiction Reunion LP Has A Name
- ATN Album Review: DJ Morpheus' Freezone 4
- You Say It's Your Birthday: Charlie Sexton

Headline Archives

$10 Million Defamation Suit Targets Tupac, Rap Labels

Anti-gangsta crusader claims Shakur (pictured), Interscope, Death Row and Tower Records responsible for slanderous song.

Addicted To Noise Senior Writer Gil Kaufman reports : It's not a vendetta against the late Tupac Shakur, said William Tucker. It's a battle to defend a constitutional right.

Then again, if you ask those on the other side, it's all about publicity.

"No one is allowed to go around heaping and distributing obscenities on a person. That is not a constitutional right of anyone," said William Tucker, husband of anti-gangsta rap crusader and National Political Congress of Black Women Chair Dr. C. DeLores Tucker, speaking to Addicted To Noise on Thursday.

With that in mind, Dr. C. DeLores Tucker has filed a sweeping $10 million defamation of character lawsuit in the US District Court for the Eastern District in Philadelphia against slain rapper Tupac Shakur's estate, Interscope Records, Death Row Records, music store giant Tower Records, Interscope founders Ted Field and Jimmy Iovine and Interscope's parent company on allegations of infliction of emotional distress, slander and invasion of privacy.

"This suit isn't about Tupac," said William Tucker, reacting to widespread reports that focused on the portion of the suit targeting the slain gangsta rapper's estate. A statement released by Tucker's office refers to lyrics from Shakur's 1996 double-CD *All Eyez on Me* that she said defamed her "in a most degrading way."

"People have focused on that one part of the release," her husband added, referring to charges that the alleged references to his wife on the album have put a strain on the couple's sexual relationship. "But this is about (Death Row distributor) MCA, (parent company) Seagrams and Tower Records because they peddle this filth to children."

Dr. Tucker was unavailable for comment due to a recent illness, her husband said.

In the song "Wonda Why They Call U Bytch," Shakur raps, "Got your legs up trying to get rich/ Keep your head up and your legs closed/ Dear Ms. C. DeLores Tucker" as well as similarly explicit lyrics in the song "How Do U Want It."

Richard Fischbein, legal counsel for the Shakur estate, told the *Los Angeles Times* last week, "It's hard for me to conceive how these lyrics could destroy her sex life. But we can only wait for the proof to be revealed in court."

Tucker, along with former U.S. Education Secretary William Bennett, have waged war on gangsta rap for the past three years, attacking the popular style for what they say is its detrimental effect on children and its defamatory treatment of women. Death Row has been a repeated target of Tucker- and Bennett-led press conferences based on the label's self-perpetuated image as the home of gangsta rap.

"In my non-legal opinion it's an easy lawsuit to file, but to prevail would be unprecedented," said Danny Goldberg, President and soon-to-be-named chairman of Mercury Records, President of the ACLU (American Civil Liberties Union) Foundation of Southern California, and longtime advocate on behalf of free speech issues. Goldberg dismissed the suit as a publicity device. "People are entitled to their feelings about music, but when they use pressure to prevent the natural marketplace from allowing the public to say what they like, I'm against that because I think it contravenes an atmosphere where free

speech can flourish."

Goldberg said that, while suits such as Tucker's are not illegal, they are nevertheless "just wrong, which is the same way I would feel if someone tried to censor her (Tucker). That's equally wrong."

Grace Bergen, legal counsel for MTS Inc., the parent company of Tower Records said she was aware of the suit but could not elaborate on it, since MTS had not been served with papers yet. "As a retailer, we believe in free speech and people's right to it," said Bergen. "Until the court makes a judgment that these products are illegal, some people believe that seeing them on the shelf will get the controversy out there, which is the purpose of free speech."

Representatives for Death Row and Interscope could not be reached for comment.

For his part, William Tucker failed to see any irony in the filing of a multi-million dollar lawsuit seeking damages from a company that his wife has spent years battling. This suit is focused on those responsible for distributing and promoting this music around the world, Tucker argued. "Everywhere my wife goes in an airport or a restaurant," he said, "you see young kids touching each other, punching each other, turning around looking at her, sniggling. Of course she feels they're talking about [Shakur] calling her those names and referring to her as a prostitute and this has caused her a lot of humiliation and anguish."

Tucker re-iterated a quote from his wife's press statement, saying, "It's the gangstas in the suites, not the gangstas in the streets that we're after."

Additionally, the statement alleges that, since the suit was filed last month, Tucker has been subject to hours of depositions, suffered surveillance and intimidation, emotional stress, received death threats, causing her "reasonable fear" for her life "because violence and death play a central role in the gangsta rap arena." On the advice of counsel, William Tucker would not comment on those allegations.

"Here we're dealing with people who are involved in creating a culture of real violence," he said, referring to the defendants in the suit. "And two people have died already."

Shakur and fellow gangsta rapper Notorious B.I.G. (Christopher Wallace) were each gunned-down in separate but still-unsolved drive-by shootings over the past year.

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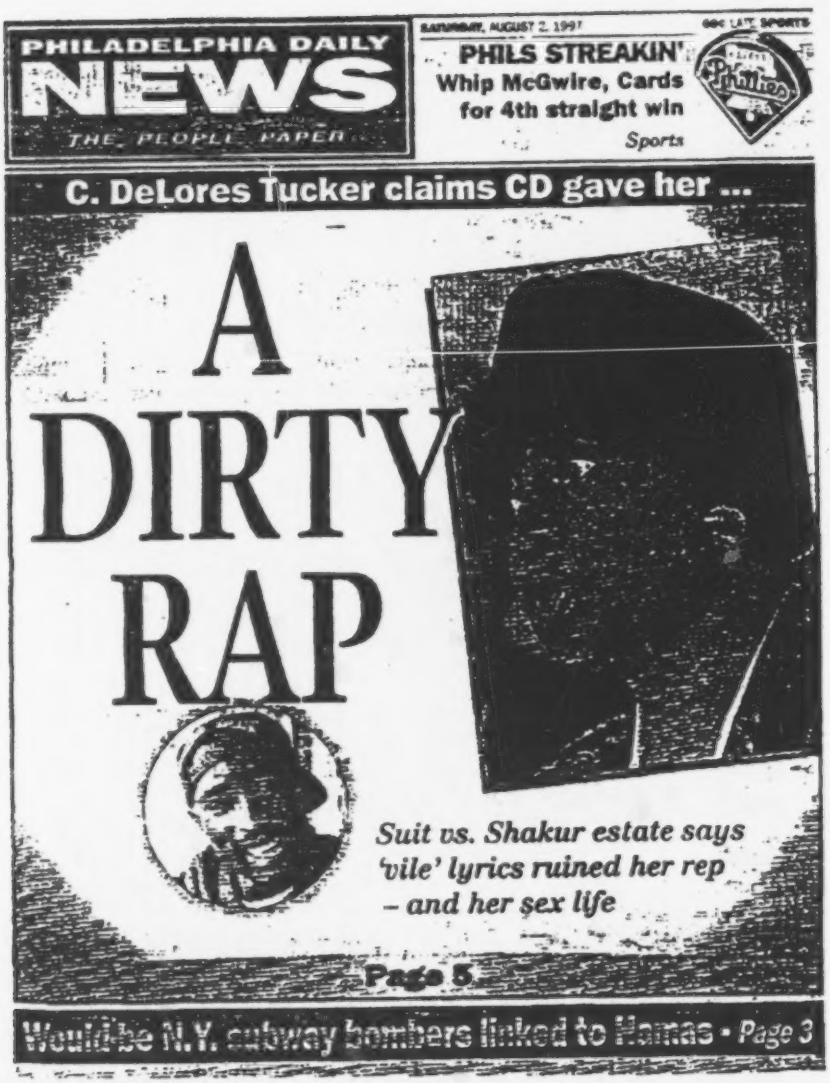
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Suit vs. Shakur estate says
'vile' lyrics ruined her rep
– and her sex life
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Would-be N.Y. subway bombers linked to Hamas • Page 3

Suit: Tupac dead wrong

Rights leader says rapper's strong words ruined her life

by Ismael E. Watson and Jim Smith

Daily News Staff Writers

C. DeLores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate, saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life.

Tucker filed the lawsuit this week in Philadelphia federal court, charging that Shakur's record-breaking 1996 CD "All Eyez on Me" caused her "great humiliation, mental pain and suffering."

"She was really called a lot of bad names," said Tucker's Harrisburg attorney, Richard C. Angino. "It was all done to intimidate her."

It also says the injuries caused her husband, William, to "suffer a loss of advice, companionship and consortium."

—Richard Pizzuto, a New York attorney who is co-administrator of Shakur's estate, said he is baffled by the suit.

"It's hard for me to conceive how these lyrics could destroy her sex life," Pizzuto said. "But we can only wait for the proof to be revealed in court."

Tucker and her husband took particular offense at the "lewd" and "indecent" references in two songs titled, "Wonda Why They Call U B—" and "How Do U Want It," the suit says.

In one song, which the suit claims alludes to prostitution, the lyrics state: "Get your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

"Tupac was just one of the instruments that participated in slandering Dr. Tucker," Angino said.

He said such companies as Death Row Records, Interscope Records, Time Warner, Seagram and Tower Records — all named as defendants in the suit — are also responsible.

"These companies make billions of dollars putting out music that destroy African-Americans," Angino said.

In filing the lawsuit, Tucker said that over the years she has tried to stop the production and distribution of gangsta rap to "impressionable youth, because it tends to corrupt the morals of minors."

She contends it "contains vile, profane, obscene and indecent lyrics which glorify drugs, violence and illicit sex."

Tucker, head of the Washington-based National Political Congress of Black Women, formed an anti-rap campaign that gained widespread support from such notables as former U.S Education Secretary William Bennett; U.S. Sen. Joseph Lieberman, D-Conn.; former Republican presidential nominee Bob Dole and retired Gen. Colin Powell.

In January 1996, she began an organized protest of Tower Records in Philadelphia because the store was selling Shakur's "All Eyez on Me" to minors.

Kathleine Dlange, administrative assistant for the South Street Tower Records store, remembered when Tucker and her entourage protested outside the record store, forcing it to close briefly.

"They were reading the obscene lyrics off of the CD through a bullhorn outside of the store," Dlange recalled. "Then, they came into the store and started to throw the CDs on the ground."

The police were called and Tucker was arrested.

"I think she blew the situation out of proportion," Dlange said.

Tucker, a former secretary of state for Pennsylvania, has been harshly condemned by some black intellectuals for aligning herself with right-wing political leaders to fight gangsta rap.

Tucker's lawyer defended her tactics, saying "there is a woman who has spent her lifetime caring about her people, and now these record companies are trying to make her life miserable."

See TUCKER Page 23

Fighting Words

Here are lyrics from two of the Tupac Shakur songs to which C. DeLores Tucker objected, starting with "Wonda Why They Call U B—":

"Dear Ms. Delores Tucker
keep stressin' me
f— with a muthaf— mind
I figured you wanted to know
you know
why we call them hos b—
and maybe this might help you understand
it ain't personal
strictly business, baby
strictly business.
So if you wonder why we call U b—,
You wonder why we call U b—."

And from the song "How Do U Want It":

Delores Tucker
you's a muthaf—
instead of tryin' to help a n—
you destroy a brotha
worst than the others
Bill Clinton
Mr. Bob Dole
You too old to understand the way the game is sold
you're lame
so I gotta hit you with the high facts
won't someone listen?
makin' millions
n—, lap that
they wanna censor me
they rather see me in a cell
livin' in hell
with only a few of us to live to tell
now everybody talkin about us
I could give a f—
I'd be the first one to bomb and cuss
N—, tell me how you want it."

TUCKER

Continued from Page 5

"This is the woman who marched with Martin Luther King to fight for integration, and now she is fighting a new battle against gangsta rap."

Since the record's release, her lawyer said Tucker has received death threats and now fears for her life. She also has incurred medical expenses, suffered a loss of life's pleasures and has lost the freedom to travel freely.

"Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena," the lawsuit states.

Calls were placed to Interscope Records, Death Row Records, and Time Warner, but no one was available for comment. ■

The Associated Press contributed to this report.

PHILADELPHIA'S LARGEST WEEKLY ■ VOL. XXVI NO. 33 ■ AUGUST 13, 1997
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rs alive and 20 years dead.
e it to Memphis to honor the King,
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my thoughts are very much there"),
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courtesy of Phantom

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Media Has C. DeLores Tuckered

After filing a $10 million defamation lawsuit against Time Warner Records and the estate of murdered rap artist Tupac Shakur, anti-rap crusader C. DeLores Tucker is now complaining that the media is out to distort the facts of the lawsuit. Claiming that clever rhymes in Shakur's "All Eyez on Me" release such as "Delores Tucker, you're a mother_____" caused her "great humiliation, mental pain and suffering," Tucker included her husband, William, in the suit, claiming that he had suffered "a loss of advice, companionship and consortium." Although the *Inquirer* didn't even cover the filing of the suit, the *Daily News* trumpeted on its August 2 front page, "C. DeLores Tucker Claims CD Gave Her A Dirty Rap: Suit vs. Shakur estate says 'vile' lyrics ruined her rep and her sex life." Daily News managing editor Brian Toolan defends the paper's treatment of the story, saying that "it's generally understood that's what loss of consortium is supposed to mean in the law." But Tucker's attorney, Richard C. Angino disputes this, stating that the phrase is a standard addition to lawsuits of this type and refers to all aspects of the marital relationship, not necessarily sex. "This is why people sometimes get so upset with the media," says Angino. One disinterested personal injury attorney who wished not to be named agrees with Angino, but adds that, "Loss of consortium is a lot of nonsense. I once recovered $50,000 for an injured women, and the jury gave her husband one dollar for loss of consortium."

—N. W.

Yard Art Better Than Flamingos And Gnomes

Philadelphia artists wrote another chapter in the do-it-yourself exhibition manual this weekend, when more than 150 art-lovers visited the South Philadelphia backyard of painter Nancy Lewis and sculptor Alexander Cheves for a look at their Backyard Sculpture Invitational. Part of a growing trend in which which artists are creating their own exhibits in vacant stores, apartments and private homes, the Backyard Invitational features works by Astrid Bowlby, Nick Fox, Jim Hinz, Laura Hutton, Emily Thompson, August Ventimiglia and Cheves himself, all in a 1,000 square-foot rowhouse backyard. The site-specific works all deal with the notion of the backyard as an urban "oasis," and although the exhibit remains open through August 15, you'll have to

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870-541-0211 7960

David Mitchell--801-574-0873--Jackie McNanley --

Richard C. Angino, Esquire, atty. for C. Delores Tucker:717-236-8721, x3021

When you file a complaint. We just got time tables from Eastern District. No. of time things come up. Two trials going on. Lawsuit where Interscope and Death Row brought suit against Dr. Tucker. Just at the opening stage of my suit. I think dr. tucker is one of the most respected ladies in this areas. community, and she doesn't take light to any of this. If you look at complaint, it has all different allegations. There's one count of loss of companionship. It's ignoring the other counts. We're talking about all of this affecting tucker. If someone affects you physically, mental, etc, they've affected the family union. in most lightpoles there is... It can include sex. Its probably one of less significant aspects in relations.

11 days of deposition. a national investigative firm. gangsta background. These are the kinds of suits on the other side. music

call me. tucker and mf, and this is your wife.

NWSWK 0006

ESTATE/R DEPT: PG:

That's what called a defense tactic.

That is the kind of thing that. Bennett is on her side. sl gave's. Intends to call Ms. Gore. Strategythis was a particular situation ms. gore was interested in. dismiss warwick.

put out a record to defame her. It's all intertwined.

what I suspect is that major ons. involved here -- sangrams and thos wanner -- they know they are wrong in supporting... I dont know what will happen.

won't discuss these areas (prospect of a settlement).
If this case winds up in trial, dr. tucker has a lot of friends who reposet her in high position. Haven't talke to gore and bennett. These people would support her if I asked her too.
I would be surprised if the matter isnt up for trial for a year. Case against her in calif. has gone on for two years.
--30--

--30--

I get called probably three days after Tupac was killed. Asked me to come to Calif., shortly after he died. She and I have a long history. And I got involved immediately. She asked me to become co administrator of the estate. And I've been dealing with it since. Never been one like this. In this situation, someone who's murder. Still haven't figure out who it was, which is amazing to me. You have an estate that when I got there there was $15Ok totally, and nothing. Theoretically, there were debts we were told that ran into the millions. Basically, I remember the first day I was there, I was asked by sheri to go see Suge Knight to sit and talk to him and we went over. Then the two of us sat

NWSWK 0007

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ESTATEJR DEPT: PG:

there for 2.5 hrs waiting for him. Then finally I just said forget it. As we were walking out, he came up in the elevator. my position:you just cant deal with someone who was that unable to deal with a mother's grief, who had just lost a son. So I just pulled her out. That was the last time we ever negotiated with him, although I believe that we have just settled the Death Row case. We started a RICO case. That is basically true. As part of the whole issue. There has been this big rico case against them. That case has basically been settled.
The RICO case will give us basically everything we asked for against Death Row, Kimsey and all the rest gave us everything we wanted, which includes forgetting the 80 million they claimed we owed them. We got out. There were a lot of tupac cuts. We get those back. And they paid. Suge wanted 25% of what he made. There are no claims. No more claims.

The fact is, we negotiated this deal with Kimsey and Interscope and us. We had a big meeting. This was a negotiated agreement in which Kimsey participated. Then he had bypass surgery and was just out of it. Grimes came in. Was told he was for the settlement. Took them to get signed by Suge. What I believe is that the real documents that were signed were signed when kimsey was there. I think Kimsey was pushing and Grimes, too. There was no sense having this fight with us. Dont know that its totally taken care of. Waiting for all the money and signatures. Believe it will all be taken.

What is it worth:That is a tough questions that you ask. Unlike other estates that you could just put a value on. It is impossible to put value on future sales. There will be a series of tupac albums released. You just have to make assumptions, and there are the old records and eventually. There is a tupac documentary that we are negotiating with HBO. And there's a full movie we are in process of negotiating with marvin worth and quincy jones. The value of the estate is a guess.

In the bank, that will be reported. Estimated at 16 or 17 million. There is a future stream. We havent receive pipeline money. If you had to estimate, $25 million, but you wouldn't get from me. Could be as high as $50.

NWSWK 0008

135a
Appendix

ESTATEJR DEPT: PG:

This was a major lawsuit that estate has taken against others. There were a series of other lawsuits that estate has taken.

1. Merchandising lawsuit whereby there were ass. selling t shirts and other things through Death Row, of which Tupac and his estate knew nothing about and was getting no money. We brought a lawsuit, we stopped them from doing that. they paid us substantial amount and were enjoyed from doing that. Have entered into a new agreement with another merchandising co.

2. Donald David will call.

The Deadbeat Dad case:

That was filed soon after he was killed. This guy said I was a deadbeat dad , but I dont care. I should get the estate. That is what this guy claims. To me, that is the most amazing claim. This case is amazing because here's a guy who admittedly never gave $700.00 in all the time that tupac was a child. Visited him two or threee times, maybe. And now after living a life in which he has scores on. of children. He had warrants out for his arrests for not paying judgements in child support cases, where he's been chased to pay for his other children and now comes along and ask for half the estate. It's amazing. But on the other side he's got nothing to lose. If stays. taking on contingent.
the guy is the biological father. There has to be a trial, and its going on. The trial has started. Some no. of days are being heard. Some more in Sept.
I dont believe there's any likelihood that he will be rewarded for his lack of interests in his son. She was part of the panther 21. When she came out of jail for a while on bail. She had relations with two men. She never knew who the real father was. She went to them. She said one can claim him, both can. This guy never came around. The other guy, tupac, always thought was his father. A fellow name Legs. Tupac always thought he was his dad. When this guy legs died, tupac thought he had lost his dad. Had kind of taken up with Marsha Shakur, whom he looked upon as his dad, she a member of the movement. Now in jail. Looked to him as guiding light. I have enough faith to know that when the story gets.

NWSWK 0009

ESTATEJR DEPT: PG:

Argumentshe's the biological father. The calif statute requiring you to be there and to support is unconstitutional. His position is that because he's the biological father, that's all. Secondly, he claims that he gave $650.00 over the course of Tupac's life, and that is enuf to deal with support issues. Also, he saw him two or three times in his life, and that's enough.

There are court papers that adjudged him a deadbeat. Passing on that issueno one should be rewarded for not taking care of their children because if that were the casethere would bds, hopefully one would make a lot of money and die and they you hit the jackpot.;
Sindded, the second phase, will be tried sometime in Sept. I think it will be over in Sept.

ARKANSAS:

The most amazing case. What happened there. At some pt., tupac went down to give a concert. before concert, shot was fired. someone was shooting at someone else, missed, hit a girl and paralyzed her. Lawsuit started against club. Everyone entertaining there that knight. Interscope, Death Row, etc. They allegedly served everybody. Got a judgement against club, $500k. They allegedly served tupac the night he was performing on Saturday night Live. Tupac never answered the summon. The claim that he was served, the affidvits of service are totally false. They talk about him being in a part of Sat. Night Live. When you are performances. Special ommunon. These guys say he was right out front. What happened:they took a default against him. he didnt put in answer. Then he was killed. Then the arkansas ct. appointed an administrator of the estate, a lawyer in arkansas, in pine bluff to be administrator. Then they served the administrator. He did nothing. There was a default taken. And they took $358 million judgement against the estate. We found out about it when I got a call from MTV News. What about this judgement. What are yuys talking about. We immediately then, understanding, how game played, hired lawyer down there. Made motion to vacate the default. They appointed a lawyer that just didnt appear. We argued it in front of the judge who did this. Judge's position, That's the way it is.
at this stage, we are up on appeal too higher court in arkansas and , if necessary, this ct. will go to s. ct.

after the judge renders decision. We get the police report. It shows that the argument was two locals, happened to walk in club, argued, took out gun and hit this woman. How any of these people, death row, tupac, interscope, get into this.

off the record the judge who rendered the decision is running for judge in that small community, and I think he is running now. That is a hell of a way.

C. Dolores Tucker -- we just got served the other day. I've read the complaint now. Hard for me to really understand what the issue is. But, you know, she claims. Her claim is that her sex life was interfered with between her and her husband. I can't wait to hear the testimony that she is going to give on the subj. When was the last time your sex life was interfered by lyrics. I can't wait to hear the testimony. So im kind of looking forward to that one. That one is the least worrisome.

The most worrisome has to be the Arkansas just because of the judges ruling. The police report totally said he has nothing to do with it. we never even got into the procedural part. To appoint some guy who defaulted, yhou wind up with a $30 million judgement. I believe eventually, the system will prevail.

What I make of it is I see a bunch of people looking for a payday. Maybe this is just a high profile, because tupac was high profile, sattelites. Wherever you have people who think they can pick up some bucks, im sure it happens all the time. I amazed at the group of people coming forth in this one. It'll just be. It's a .. Like being on a ship and watching pirates trying to loot it. That's on the one side.

on the other side, there's was nothing there. Taken amount of energy to get what we rightfully tupac's. Then when you take it all, people show up, and you have to scratch your head a little. Not the most unusually.

No matter what you say about him, Suge, the man had a talent of putting out hit records. As long as there is money in records, somebody will put it out.

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everybody from madonna. a series of people. OFF RECORD:not focused. The old days, from a different era. .when it came time for us to choose somebody to look at how estate got fished. he was one guy I interviewed to get into it and look. Everybody loved him. I said no, I wouldnt take him. we were looking for ace., not hyperbole. Want with big six accounting firms, as opposed to someone like him. The time has passed. Think now it's such a big and complex biz, you need a series of tax geeks.

donald david

--30--

It's probate. What happens when someone finds probate. An heir files a petition. Afsni did. She filed early on and said father was dead, she is sole heir. Then she filed saying there's a guy out there name garland who claims to be the father. He's not, and the real father is dead. Bill was served with second. He was put to the question how to respond. he responded that he was father and wasnt dead. Some have suggested there is something untoward about himm telling the truth. That he should have lied and said he wasnt the father and afsni should get whole state.

he filed responding to afsni's petition, saying he is father. when someone dies without a will, calif. law doubles. There is neither spouse or kids. Calif. statute says parents inherit equally. They are battling the issue. They now conceden paternity. We had two days of trial in which she conceded that issue.

There were several petitions preceding this one that said:/. We did dna testing. we did the test, it came out 99.97% that he's father. took blood of all three. Tupac's afsni and bill. From the coroner. They conceded paternity.

Aug. 4 and 5.:

NWSWK 0012

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ESTATE/R DEPT: 90:

She's running around saying all kinds of crazy things-the father is dead. Bill abandoned the kid. He didnt care about son. That he only managed other tapac d ied. Complete hogwash. Bill saw his son from 1971 until 1976 when she disappeared with him. Bill was living in jersey city. She couldnt find him. She described herself as a nomad. That's a nice way to put. she was on drugs, living in bus stations, homeless. The kids weren't living with her at all times. They were nomad. Bill was living with his family in jersey city. He was married, and he had three kids of his own with his wife. That is what the testimony was about. Then when he found tupac was alive in 91, he immediately sought him out. She prevented it.

The fact90s, that she didnt know who the father was, Bill or Legs, who was according to her a street hustler who died in 84. was jailed at time he died on credit card fraud. She said she didnt know. Look at picture of garland and tupac, you'd be crazy if you think.

copies of pictures during the first phase of trial. He was on st. TV.Tupac was quoted as saying in couple of articles when he looked up and saw his father he thought he had died and gone to heaven. Thought he saw the face of how he would look in his forties.

Afeni and tupac lived in baltimore from 84 to 88. Move to calif., lived with geronimo pratt. from 88 to 91. then got in some trouble. Back to NY.

When he did outlaw and bill knew where to reach him or tried to until he did.
he first started trying to reach in at end of 91. Tupac we sin Jnico. Bill got sheild of publisher, named carlyn Lee refused to put him in touch. She didnt feel it was her place to establish a reunion. Finally in 1993, tupac in new york and got shot, bill went to hollview to see him. Subsequently saw him numerous times. Tupac incarcerated from 94 until Nov. 96. Bill saw him at jasmine guys a couple times. At looks movie.
saw him in prison a few times. Then he didnt get out until 8 or 9 months before his death. The resumption of the relationship was good part of the testimony. There were death threats against tupac in prison. Bill arranged for sharpton to go up and talk to.

NWSWK 0013

real issue isn't paternity/it resovles around statute in 1995, in order to inherit from a child born out of wedlock, one needs to do certain things:acknowledge the child, and to have contributed to care and support of the child. That is what the issues are in determining the petition by abmi. Both have to show that they fit definition of parent and acknowledging child and contribute to care and support.

The issue is contribution to care or support. Factiuated legal issue:was the statute govern the conduct in nj and new york. can it reach across state line and govern conduct before it was inacted. We've attacked the statute as being unconstitutional. Judge says he's gunna accept it as c onstitutional.
you got to contribute to support and care. Cot's inacted in 88. They say when tupac was in new york, calif and baltimore that he someone had to comply with a statute that wasnt inacted. it discriminates against unmarried people at time when african americans 70% are born out of wedlock.
Statute applies only because parents are unmarried. Not due process. Calif. have no extra territorial effect. And in this instance, it has no interest in enforcing this statute. Tupac was barely ever a resident in calif during his minority. tupac was 18 in 1988 or whenever.

born june 71.

he did constributed to care and support.
bill had him in his home from 71 to 78. from time to t ime, no regular pattern, he would get tupac bring himm to his home in nj. several witnesses has established tupac was bedwetter. Bill was basketball player. would take him to games and movies. This is all documented.

every single witness is beyond supoena power of calif. The evidence comes from deposition we took. Bill's first wife's video of her deposition in which she said these things. I took him out shopping. there's video of his brother carlos malik, saying he remembers playing with him. They were born within three weeks of each other. Two boys were born within two weeks of each other.

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ESTATEJR DEPT: PG:

when tupac was in prison, carlos and landon, a second brother, went up to see him with garland. one witness rep from new jersey, phil webb, a friend of bill, who play b ball with bill. He was first to recognize tupac in Juice. He knew lee. lee had grown up in nj. she was saying I just started repping tupac. That's bills kid. Police called bill. Said your kids in a movie.

bills ex wife at about same time.

carol lloyd was pregnant. they met, I caring your hubby's child. Lee testified she and Bobi webb were at ... alani walked over and said here's your son.

Globez. that one involved death row. An allegation by globez that death row entered into this arrangement. With a bounceback card, included in All Eyez. Bounceback card. Death Row denies an arrangements with globez. Globez admitted that to extent it was selling merchandise outside of ed, no authority.

one going on now, in which a gentleman took a track from a record or album that was released in connection with million man march. it was called "running with the police." He removed the side tracks, dubbed in his own. Has released the track on an album of his own. Now called "stop the gunfight." His name is Trapp, real name John Parker.

Against. Haitian Jack. Alleging he was defamed by defamed as an.

Orlando Anderson filed claim. The guy allegedly beatened up by suge has filed claim against.

B L Diamonds, a company that sells jewelry, i.e. Steve Gastrock, the accountant for Death Row. He had a personal relationship with the guy who owns it. Suge bought a lot of jewelry at B L Diamond. One thing he bought and gave to performers. Some to Tupac. When we got claim from death row. They alleged they paid out money to B L. That was given out as gift by suge. When Pac was dead, they put it in as claim from death row. Then we got a claim from b.l. that it was never paid. $300k for that one.

NWSWK 0015

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[redacted] DEPT: PG:

There are probably 37 separate actions at this pt.

they've released an album in australia, complete album. An album released in Japan, Blue Dolphin. A guy who apparently sold them a series of tracks claiming he had rights to them. He had actually forged releases. He was a producer hired on a contract basis to do an early demo tape. He sold them to Blue Dolphin.

Kendrick Wall case. He had some tapes that he claim tapes had given to him.

everybody is trying to get a piece of this action. everybody is looking to make a buck on this action.

this happened with the marley estate. A whole history of litigation. All of these have had ..

the free flowing nature of rap performance makes it easier. A lot is contractors, entrepreneurism. technology makes it easier. No big deal to us else side of music.
If dont actual instances.

A website whit tupac music. What can I possess do go shut down the website.

35 are cases we brought. To shut down.

1. What has been the testimony so far in the case? Can you provide it?

[redacted] Page 11 of 13

NWSWK 0016

ESTATE/JR DEPT: PG:

2. What is the claim?

3. On what basis are you pursuing this, what is the argument?

4. The other side is saying, he's a unselfish deadbeat dad. Never played a role in input's life, hide from several different women that he also doesn't support, that input never even recognized or considered him to be his dad. A plane?

5.

NWSWK 0017

MEMORANDUM

TO: Tucker file (No. 1:CV-97-6150)

FROM: RCA

RE: Tucker v. Newsweek and Time

DATE: December 11, 1997

As a result of a recent telephone call from counsel for Newsweek, it appears as if Newsweek's reporter disputes the facts of our conversation. I am, therefore, going to dictate this memo to preserve my recollection of what transpired.

As a result of the defamation complaint which we filed in July against Death Row, Interscope, et al., there was an article that appeared in a Philadelphia newspaper which gave Fischbein's spin of our cause of action as being one for sex damages as a result of Defendants' defamatory conduct. The Tuckers were understandably upset and relayed their distress through Paul Waters, their personal attorney. I recommended because of their high profile that they go on the speaking circuit and explain to the news media that the case had nothing to do with sex, they were not claiming any damages that in any way involved their sex life, etc.

Despite the Tuckers' public announcements to the news media that the word consortium in this case did not refer to sex, and they were making no claim for sex damages, various newspapers and magazines found Fischbein's twist or spin to be good writing material.

In mid to late August, a month after our complaint and weeks after the Philadelphia newspaper article (August 2, 1997), I received a call that a Johnnie Roberts wanted to talk to me with regard to an article that he was writing for *Newsweek Magazine*.

We played telephone tag. I eventually reached him. He said he would call me back "on his nickel." We eventually had a discussion.

My recollection of the discussion is as follows. Johnnie Roberts explained that he was writing an article dealing with the various lawsuits against Tupac Shakur's estate. He stated that Fischbein considered our lawsuit the weakest action of all. Roberts gave Fischbein's spin as to our lawsuit being one whereby we claim that the Tucker's sex life had been affected by Tupac's

recording. I asked Roberts if he had read our Complaint. He said he did. I actually asked him to get the Complaint out and to look at the paragraphs dealing with damages. I pointed out to him that there was absolutely no mention of sex in any paragraphs of the damage count. I went on to state that Paragraph 50 which was the consortium claim for Mr. Tucker is the only paragraph that could in any way be misconstrued to involve sex. I explained in great detail to Mr. Roberts what "consortium" means in the law. I told him in very rare circumstances it can involve an interference with the sexual lives of a husband and wife. I pointed out to Mr. Roberts that our consortium claim in this case did not in any way involve any claim that Tupac Shakur's defamatory recording affected the Tuckers' sex life.

We also discussed all of the important people on Mrs. Tucker's side. I recall mentioning Tipper Gore and the work she did in this area before Mrs. Tucker got involved. Mr. Roberts snickered as if in disbelief that the wife of the Vice-President or any other important individual whom I mentioned would get involved in the case.

Mr. Roberts mentioned the Falwell/Hustler Supreme Court suit and the First Amendment right of Tupac to say whatever he wanted. I pointed out to him that the cases were not analogous and discussed the differences in procedure and subetance.

I could tell from the other end that Mr. Roberts did not want to hear what I was telling him. I became exasperated and went through the entire history from the time of the filing of the Complaint to the article in the Philadelphia newspaper, to the Tucker's going out at my suggestion and pointing out publicly that our lawsuit had nothing to do with sex. I told him that I had received other phone calls from other magazines and newspapers, and it seems that all they wanted to talk about was Fischbein's sexual spin. There is absolutely no question that I told Johnnie Roberts, as I had told the other callers, that the case did not in any way, shape, or form involve a claim for sex.

Although I spent a substantial amount of time as will be confirmed by the long-distance telephone log, I was quite sure that Johnnie Roberts was going to ignore everything that I told him and write the same story that he would have written if he had not called me.

A few days later, I received a voice mail from a local attorney by the name of Leslie Handler telling me that my name appeared in an article in *Newsweek*. I went to a Rite Aid drug store, found the section where *Newsweek Magazine* was located,

leafed through the magazine, saw the article including my name, and bought a copy (September 1, 1997).

Around the time of my discussion with Roberts, I dictated an amended complaint to make unequivocally clear for the record the fact that the case did not in any way involve sex, that no claim was being made for sexual damages, that the sexual spin was Richard Fischbein, and that various newspapers and magazines were taking Fischbein's spin and using it to sell newspapers and magazines. Fischbein was doing this for the obvious purpose of belittling our complaint and potentially affecting potential jurors. After talking to Roberts and seeing the article that later appeared, I was convinced in my mind that the news media was not in any way interested in the truth, but rather merely interested in selling their product.

The amended complaint was mailed to the Court for filing on August 27, 1997. It corroborates the essence of my discussions with Roberts. We received notification from the Court that it was filed on September 2, 1997. It was served on Time Warner on September 9, 1997. Fischbein was mailed a copy on August 27, 1997.

Incredibly, despite all of the above, a reporter for *Time* did a story carrying the cover date of September 22, 1997, which stated:

> ... The prize for the most bizarre suit, however, goes to anti-rap warrior C. DeLores Tucker, who claims that lewd remarks made about her on Shakur's album <u>All Eyez on Me</u> caused her so much distress that she and her husband have not been able to have sex. She wants $10 million.

After talking to Paul Waters and talking to my clients, we felt it was imperative to file a second amended complaint, file separate lawsuits against Time and *Newsweek*, and have a press conference.

There was difficulty in setting up a press conference because I had an incredible amount of office work to do at the time. The second amended complaint was filed on October 1, 1997, and a press conference at the Washington Press Club was held on October 1, 1997.

My path crossed Johnny Roberts a second time in a telephone interview with a Chicago radio station. The subject of First Amendment rights and the <u>Falwell/Hustler</u> case came up. Johnnie Roberts' only comment was that he was not a Supreme Court scholar. He was totally different in his August telephone discussion.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

against

RICHARD FISCHBEIN, TIME WARNER, INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE, and JOHNNIE L. ROBERTS,

Defendants.

(Caption continues on Page 2)

1271 Avenue of the Americas
New York, New York

July 1, 1998 9:10 a.m.

Deposition of the Defendant,
JOHNNIE ROBERTS, before Rita Persichetty, a Notary Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO.
110 East 59th Street 25th Floor
New York, New York 10022
212-750-6434
REF: 60494A

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

against

RICHARD FISCHBEIN as co-administrator and AFENI SHAKUR as co-administratrix of the Estate of TUPAC SHAKUR,

Defendants.

Civil Action No. 97 CV4717

ELLEN GRAUER COURT REPORTING CO.

110 East 59th Street 25th Floor

New York, New York 10022

212-750-6434

REF: 60494A

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BY: DONALD N. DAVID, ESQ.
and

BETH W. FISCHBEIN, ESQ.

ALSO PRESENT:
THOMAS SCHOPPER, Legal Assistant

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that the filing, sealing and certification of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath with the same force and effect as if signed and sworn to before the Court.

JOHNNIE ROBERTS, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. ANGINO:

Q. Please state your full name for the record.

A. Johnnie Roberts.

Q. What is your address?

A. 134 South Kingman Road, South Orange, New Jersey 07079.

MR. BAINE: Before we begin, let me just note on the record, this deposition, the objection that I had previously made to you in correspondence to your acting as counsel in this matter and in particular to your questioning Mr. Roberts at this deposition, at least to the extent that you have any intention of using this deposition at trial. You are, in my view, clearly a witness to this case, you are a

participant in a critical conversation that you're going to be questioning Mr. Roberts about this morning. In my view, the rules are clear that you are disabled from questioning this witness about anything material to this case and in particular that conversation at trial, if not in discovery, and as I've said to you before, we will most certainly object to your using at trial any deposition that you conducted and in particular this one.

So our position is that you are disabled from acting as counsel in any examination that will be used at trial.

Thank you.

Q. What is your full name?

A. Johnnie Lee Roberts.

Q. Mr. Roberts, what is your educational background?

A. I have an undergraduate degree from Eckerd College.

Q. What is the spelling?

A. E-c-k-e-r-d.

Q. Where is that?

A. St. Petersburg, Florida. Political science bachelor, that's it.

Q. Did you take any courses in journalism when you were in college?

A. No.

Q. What year did you graduate from college?

A. 1977. I guess I should amend that last answer. I took writing courses in college. They weren't necessarily journalism courses.

Q. Was there a journalism department at that particular college?

A. No.

Q. What did you do after you graduated from college?

A. Well, while in college I worked part-time at the local newspaper, The St. Petersburg Times. Upon graduating—

Q. I'll just ask another question along those lines. What did you do for the newspaper?

A. A variety of jobs from, this was a part-time job of course,

working in the advertising department, ultimately though I worked as a researcher for the editorial department.

Also with respect to an earlier question on education, upon graduating I was hired on full-time at The St. Petersburg Times at which time I did attend a journalism institute for that summer.

Q. What was your class rank in graduating from college?

A. I couldn't tell you that exactly. It was fairly high though.

Q. In the course of going to college did you have certain subjects that dealt either directly or indirectly with things such as logic?

A. Much of it did.

Q. When you were in college were you exposed to the elementary principal that all men are mortal? Socrates is a man, Socrates is mortal, did you come across that in college?

A. I don't know precisely.

Q. But something along those lines?

A. It was a liberal arts education.

Q. You understood that that is a conclusion that one can reach if all men are mortal, Socrates is a man, Socrates is mortal; is that right?

A. Yes, more or less.

Q. Now if we say some men are rich, Socrates is a man, can we say that Socrates is rich?

A. No.

Q. It's not a proper conclusion?

A. No.

Q. Doesn't follow; is that right?

A. No.

Q. So you knew that from studying in college?

A. I suspect so.

Q. Now, when you graduated from college you went on to continue working for a newspaper, now on a full-time basis; is that right?

A. Correct.

Q. In what capacity did you work?

A. As a reporter.

Q. There are various types of reporters. What type of work were you doing?

A. Not quite sure—

Q. For instance, did you have a beat? I'm trying to get more specific.

A. Yes, I had a number, I worked on a number of beats. I worked a number of beats, yes.

Q. Did you have particular types of stories or were they very general?

A. They ranged from general to stories on a particular beat which are one kind of story about that beat to investigative.

Q. Did you at the time of your first job have occasion to report on things that involved writings whether they be books or whether they be complaints that might be filed in courtrooms or whether they might be particular documents or they involved something in terms of a writing? Did you have a course to do any reporting along those lines in your first job?

A. As source material, yes.

Q. So that did you learn fairly early in your career that if you're going to report on something that is a writing, you need to have the writing?

A. It varied. In many instances, yes. Under certain circumstances, no.

Q. So tell me what circumstances if you were reporting on something that was actually in a printed form when you wouldn't need the printed form.

A. Well, if I had access to the source.

Q. The person who wrote it?

A. The person who wrote it, that's one instance.

Q. What other instances?

A. If I had talked to, in the case of you mentioned a legal document, I suspect that if I had talked to all parties concerned, perhaps even the judge, that perhaps in that instance it would not be necessary depending on what I was focusing on in the story.

Q. But if you were focusing on the writing portion of the story would you not need the writing?

MR. BAINE: Objection to form.

Q. He's going to do that throughout, so you can answer.

A. Repeat your question please.

Q. But if you were focusing on a writing, for instance a Complaint, would you need the Complaint?

A. If I were specifically going to describe something in that Complaint, yes.

Q. And you learned that from the beginning practically; is that right?

A. Fairly early on.

Q. With regard to that writing I suspect that as part of your job you did report on legal types of things on occasion?

A. Yes.

Q. So that it seems that most newspapers happen to talk about lawsuits at different times and yours was not an exception; is that right?

A. Correct.

Q. So from the beginning of your career you would have been

aware of some elementary aspects of the law such as the fact that a suit normally involves a piece of paper; is that right?

MR. BAINE: Objection to the form.

Q. Is that correct?

A. That paper is involved in lawsuits.

Q. In starting a suit you have a piece of paper?

A. That you file a lawsuit?

Q. Yes.

A. Right.

Q. You knew that from the beginning?

A. At some point early on in my life.

Q. And that piece of paper describes the basis of the lawsuit; is that right?

A. Generally.

Q. Your experience was such that at the top of the first piece of paper there's usually the name of the parties that are involved; is that right?

A. Correct.

Q. And then it goes through a description of who the parties are and what happened and what their claims are; is that what your experience has been?

A. Generally, yes.

Q. When you were reporting in Florida did you have both State cases and Federal cases?

A. They were almost exclusively State cases.

Q. Almost exclusively State cases.

And did you understand fairly early on that in those State cases there was a requirement of some specificity in terms of the facts and the damages?

MR. BAINE: Objection to the form and to the extent that you're calling for a legal opinion.

MR. ANGINO: No, I'm looking as a journalist.

Q. I know you're not a lawyer, but I'm just talking from having looked at enough Complaints in your life time you would see that in

those Complaints in the State Courts in Florida. There would be a description of what happened and then certain claims made; would there not?

A. Yes.

Q. There are words used in Complaints and when you saw those words how did you, if you didn't know what a word meant, how did you find out what a word meant?

A. Generally I would consult a dictionary, namely Black's Law.

Q. So from early on you became familiar with Black's Law Dictionary; is that right?

A. Yes, I covered the courts once.

Q. You covered the courts? So "covering the courts" meant you had to know something about the words that were being used; is that right?

A. I mean I had to learn.

Q. Let's talk about "covering the courts", what that involved.

MR. BAINE: That's not really a question.

Q. What did that involve for you?

A. I can't answer that without a little more specificity.

Q. You were a reporter working for a Florida newspaper and you covered the courts, what did you do?

A. Well, I'd go down to the courts, check for the cases that had been filed, if they seemed newsworthy I'd go to the clerk, find out where the paper was, contact the lawyers.

Q. And write about them?

A. Not necessarily write about it.

Q. Sometimes you would and sometimes you wouldn't?

A. Right.

Q. What portion of your early career working for that Florida paper involved covering the courts?

A. I don't recall precisely.

Q. The majority?

A. No.

Q. A portion of your time?

A. Yes.

Q. With regard to the particular paper that you were working for, how many reporters were there?

A. Don't hold me to this number, but about 100.

Q. Of those 100, how many covered the courts?

A. At any one time no more than two, three, four.

Q. So you were somewhat specialized because you were one of those two, three or four; is that right, as far as the courts?

A I covered the courts as a beat for a while, yes.

Q. So that although there were—whenever we ask questions in depositions if you say about 100, if it turns out to be 80 or 120 we are not looking for that kind of specificity. We are looking for generalities. If a particular newspaper as an example had 10 people versus 100 we get a sense then of the size of the particular paper.

MR. DAVID: I object to that. I'm looking for specificity.

A. Well, at various times—

MR. BAINE: I don't think there's really a question pending.

Q. There's no question, I'm just telling you as I'm asking you questions I want you to know that we are just trying to get a sense of the size of that newspaper and your best estimate is that it had approximately 100 reporters, approximately 100 reporters, two, three or four of whom at any one particular time might be covering the courts; am I correct?

MR. DAVID: Again I'm going to object, first of all to the colloquy, but more importantly to what we are looking for. Once again, you can state what you're looking for, Mr. Angino, but you cannot state what I am looking for. I am looking for accuracy.

Q. Am I stating accurately the fact that there were a certain number of reporters that happened to be about 100?

MR. BAINE: He's done. He's given his answer as best as he can.

Q. And the number that reported the courts were two, three or four?

A. At any one time.

Q. You were one of those two, three or four?

A. For a while.

Q. What's a while?

A. I don't recall how long I worked that beat, but it would have probably been no more than a year.

Q. Complaints, I assume that you saw many of them involved automobile accidents?

A. I wouldn't say many, I can't answer that.

Q. What would be your best recollection of the most common type of Complaint that you saw during that period of time?

A. I covered criminal and civil.

Q. Well, I'm talking about civil.

A. There were torts.

Q. And torts, do they mean automobile accidents, are those torts?

MR. BAINE: Objection. You asked that question two different

ways.

Q. Okay, I'll try to rephrase it. You understood that there is something called the civil law; is that right?

A. Yes.

Q. And you understood there is something called the criminal?

A. Yes.

Q. You at least by covering the courts understood the difference; is that right?

A. Yes.

Q. In the civil law did you understand that there were torts and there were contracts?

A. Yes.

Q. When you took the courses in college in your major, in political science, did you have any courses that discussed, even in an elementary way, certain legal principals?

A. I vaguely recall.

Q. You vaguely recall. For instance, there are oftentimes in

political science courses areas where various aspects of the law are discussed; are there not?

A. Yes.

Q. So even by the time you graduated from college you knew that there was civil law and that there was criminal law; is that right?

A. Yes.

Q. And you knew there were torts and that there were contracts; is that right?

A. Yes.

Q. So that when you were even in college were you aware that there was a Black's dictionary?

A. I think so.

Q. So you knew that even in college and once you got out of college you actually used Black's dictionary in order to cover the courts; is that right?

A. On occasion.

Q. On occasion if you still had any questions that weren't answered by Black's dictionary did you consult with lawyers whom you respected?

A. Yes.

Q. So that if you wanted further elucidation or further explanation with regard to something, you would on occasion talk to a lawyer; is that right?

A. we have a lawyer on staff.

Q. You actually had a lawyer on staff so you would talk to him or her?

A. Yes.

Q. Back in that period of time was there something in place with respect to your particular newspaper that required, on occasion, for the lawyer who was on staff to be involved with your stories?

A. In most cases.

Q. In most cases?

A. That's because my editor was also a lawyer.

Q. So your editor was a lawyer and there was, in addition, another lawyer on staff?

A. Yes, there was a lawyer on retainer.

Q. On retainer. And let us assume as a hypothetical that there

was an automobile accident and the automobile accident might have involved a person that the people in the community would know and you were going to write a story about that accident. Would all stories such as that be reviewed by the lawyer on retainer?

A. No.

Q. Under what circumstances would the lawyer on retainer look at the story?

A. Well, if I was just writing about an accident, probably not, that's not, that's a police story and it would be basically based on the police report.

Q. Looking at the police report, so if you were writing about an accident you would know that there's a police report; is that right?

A. Yes.

Q. And you would know that the police report has certain information in it; is that right?

A. Yes.

Q. Now that accident could therefore lead to, under certain

circumstances, a lawsuit; is that right?

A. Could it? I guess, yes.

Q. And from your experience oftentimes there were lawsuits involving automobile accidents; were there not?

A. There were lawsuits involving automobile accidents.

Q. If you covered the beat at the courthouse and you went to—did they have something called a patontry (phonetic) or where would the place be called where the Complaints were filed down there?

A. Which Complaints?

Q. In a civil case down in Florida what would that department be called where you filed a Complaint, patontry or clerk?

A. Clerk.

Q. You would go to the clerk's office, I assume, and say, "Any Complaints filed today", is that par for the course?

A. Generally.

Q. And they got to know you and said, "There were six filed

today", would you look over those six?

MR. BAINE: Objection to the form of the question. You're asking him to assume that the clerk has said to him six were filed today?

MR. ANGINO: Right.

A. Well, they wouldn't necessarily say there were six, they would say suits were filed and maybe I would, maybe I wouldn't.

Q. You might look at them, you might not?

A. Correct.

Q. How would you make a decision as to when to look and when not to look?

A. Well, if I were actively covering a trial at the time I probably wouldn't look at them.

Q. Just busy doing that trial?

A. Or doing other stuff.

Q. Slow period of time?

A. Was it or is it?

Q. If it is a slow period of time then you might look at it?

A. Always looking for stories, yes.

Q. As part of looking for a story is one of the key ingredients the people in court?

A. No, not necessarily.

Q. For instance, we can't pick up a newspaper today without seeing things about Clinton; can we?

A. Generally, that's correct.

Q. Historically you are aware of other individuals, where reporters spent a considerable amount of time talking about perhaps their sexual lives, such as Tower, are you knowledgeable about the Tower investigation?

A. Yes.

Q. And he went off about, months and months about his drinking and his sexual predilections; did he not?

MR. BAINE: Objection to form.

Q. Newspaper covered it for a long time; did it not, the Tower period?

A. I vaguely recall there was extensive coverage of that.

Q. If there was an individual who wanted to be president and

he happened to be on a yacht, you remember who that was?

A. Yes.

Q. Who was that?

A. Gary Hart.

Q. And was there a lot of coverage about that particular situation?

A. Yes.

Q. Did he act, in the end, decide he wasn't going to proceed because of this coverage?

MR. BAINE: Objection to the form.

MR. DAVID: Objection.

A. I don't know why he decided, but he dropped out of the race.

Q. Didn't he say he dropped out?

A. I don't recall.

Q. So that if Gary Hart was not Gary Hart and Tower was not Tower, do you think there would have been the same amount of coverage as to their escapades?

MR. BAINE: Objection to the form.

Q. You may answer.

A. Certainly not.

Q. So at least the names of the people and their particular celebrity status or public figure status has something to do with news reporting; would you agree?

A. Has something to do with it.

Q. What is your answer?

A. I guess if they were engaged in activity deemed to be newsworthy journalists would write about them.

Q. And you've heard the terms "public figure" and "private figure"; is that right?

A. Yes.

Q. What is your best definition for a public figure?

MR. BAINE: Well, object to the extent that you're calling for a legal definition.

Q. Journalistic definition.

A. Well, someone who is widely known for any number of reasons.

Q. And a private figure?

A. As the word would suggest, somebody that is unknown.

Q. And in some portions of newspapers and in some portions of magazines there are particular sections devoted to, quote, celebrities, quote, or public figures; is that not correct?

MR. BAINE: Objection to the form. Are you asking whether there are sections dealing with celebrities and public figures or are you asking whether there are sections with those titles?

MR. ANGINO: I'll take the first dealing with those copies. Some may actually have those titles, but let's make it more general dealing with those subjects.

A. Well, sort of a yes and no answer for me.

Q. We took the deposition of Belinda Luscombe of Time and she mentioned that she authors a particular section that deals with

that type of subject. Are you familiar with what she writes for Time?

A. Not really.

Q. Does Newsweek have a particular section of its magazine that discusses what is happening in the celebrity area or newsworthy area or public figure area? I'll eliminate the newsworthy, but that's obviously public figures and celebrities?

A. Generally so, yes.

Q. What is that section entitled?

A. Newsmakers.

Q. If you look at Newsmakers normally you see names that the public would recognize; is that right?

A. Not always.

Q. But mostly?

A. Varies from week to week.

Q. So that someone like a Gary Hart or a Tower, at a particular time when certain events were going on, might you expect to see those individuals in the section that we are discussing?

A. Not necessarily.

Q. We were talking about what is newsworthy and we were

talking about public figures, celebrities. Would you agree that what public figures or celebrities do is often reported in publications?

A. I dor 't understand the question.

Q. Madonna having a baby, would you expect to see that in a newspaper?

A Yes.

Q. If your wife had a baby would you expect to see it in the newspaper?

A. Mine? Probably.

Q. If my wife were having a baby would you expect to see it in the newspaper?

A. The local newspaper, yes.

Q. There you go, but if my wife was having a baby would you expect to see it in Time or Newsweek?

A. Under normal circumstances, no.

Q. But if Madonna was having a baby, would you expect to see it in Time or Newsweek?

A. Probably.

Q. What is the difference?

A. Madonna is someone known the world over.

Q. That's right. So being known the world over in and of itself makes for copy; does it not?

A. No.

Q. It does not?

A. No.

Q. Is there some reason why we have magazines that are devoted to celebrities?

A. There are a number of reasons, yes.

Q. What are they in your estimation?

A. There's an audience for it.

Q. People want to read about things; is that right?

A. Correct.

Q. They want to know what clothes they wear; is that right?

A. Among other things.

Q. They want to know who they're dating; is that right?

A. Among other things.

Q. They might even care about their hairdos; is that right?

A. Among other things, I guess, I don't know.

Q. They may care about whether they had babies or didn't have babies or got divorced or didn't get divorced; is that right?

MR. BAINE: Objection to the form of the question, pretty broad and pretty vague.

Q. Is that not true?

A. In some cases it's true. Some cases, no.

Q. So you didn't take a course in college in journalism. Did the time come about where you read books dealing with journalism and reporting?

A. There were, I vaguely recall some source material in that course.

Q. What course?

A. That summer course I took upon taking the job at The St. Petersburg Times.

Q. Tell me about that summer course.

A. Its just a basic course in reporting techniques, elementary

writing techniques, I guess it would have been what we'll call analogous to Journalism 101 in college, I guess or even high school.

Q. So you did take a course in basic journalism or basic reporting?

A. Yes.

Q. And this course lasted how long?

A. It was during the summer so no more than three months. It might not have been three months.

Q. During the course of those three months did you actually go to a particular place to take that course?

A. Yes.

Q. Where was that particular place?

A. It was in St. Petersburg on Central Avenue.

Q. Was it a school or what type of place was it?

A. It was a—the name of it was The Porner Institute.

Q. Can you tell me in general terms what happened there?

A. Well, we were assembled there in the summer course. We

had an instructor and he taught us.

Q. How many approximately were in your class?

A. I don't have a vague notion there. It was so long ago, I mean it wasn't hardly more than are here.

Q. Ten, 20?

A. No, ten.

Q. More like ten, okay. Approximately ten people, we'll use that.

Who was the teacher or professor?

A. I honestly can't tell you. I don't remember that.

Q. What was his or her background?

A. I vaguely recall he was a journalism professor at an institution of hard learning in Tampa.

Q. Did he come once a week or more than once a week?

A. More than once a week.

Q. Your best recollection, three times a week?

A. Two or three.

Q. Two or three times a week. Was class an hour or longer?

A. I think it was during the morning hours.

Q. Approximately how long?

A. Each class?

Q. Yes.

A. I don't know, two hours, three hours. I don't know, I don't remember.

Q. Two or three times a week, two or three hours, for three months; is that what we are talking about?

A. I don't remember precisely.

MR. BAINE: Now you're making it sound more precise than what he said.

A. I don't remember the number of students precisely, the number of days I don't remember precisely, nor the number of hours do I remember precisely.

Q. But your best recollection it was two to three hours?

A. That's a guess I just don't remember.

Q. It was in the morning?

A. Yes.

Q. It was two or three times a week?

A. Again it was more than once. It could have been two, it could have been three, it could have been more. I just don't remember.

Q. And it lasted for approximately three months?

A. No more than three months.

Q. Was there a book?

A. I don't recall that there was a book.

Q. Were the people attending that course individuals working for newspapers or publications?

A. I remember it was a mixture, many of them were college students as I recall.

Q. Did he, as part of the course, teach you what was quote, newsworthy?

A. We covered what may or may not be news stories, yes.

Q. Did he, as typically is done in 101 or basic journalism, state dog bites man newsworthy?

MR. BAINE: Objection to the form. I'm not sure what that is asking.

Q. Is that a common thing that's taught in Journalism 101, dog bites man, newsworthy?

MR. BAINE: Objection to the form of the question. I don't know what you're asking for.

Q. Do you know what I'm talking about?

A. When a dog bites a man is that newsworthy? It's a little more complicated than that. There are—oftentimes that's a story.

Q. Oftentimes that is a story. What about man bites dog?

A. Generally.

MR. BAINE: Objection to the form. Are you asking him whether that is newsworthy?

MR. ANGINO: Yes.

A. It's not necessarily newsworthy, no.

Q. You never heard that elementary explanation in Journalism 101?

A I didn't take Journalism 101.

Q. Or this course, did he tell you dog bites man is a common thing it's not newsworthy, man bites dog is unusual, newsworthy? You never had that?

A. I don't remember this precisely.

Q. It is a nice day. Newsworthy?

A. Often.

Q. That's a nice day. The fact that there is a torrential storm and there's damage done to houses is more newsworthy or just the same?

A. Probably more.

Q. What were you taught in terms of what is and what isn't newsworthy?

A. Something that has or is deemed to have an impact on a large number of people, much of, or a lot of what happens in government, disasters, tragedies.

Q. Things that are sensational?

A. No, not necessarily.

Q. Not newsworthy?

A. Not necessarily.

Q. Did you grow up in the period of time of Peyton Place?

MR. BAINE: You mean the book?

MR. ANGINO: Book, television program.

Q. Television show went on for a long time?

A. Yes.

Q. It's gotten to be actually an expression of a particular type of place, if you use the words "Peyton Place" does it mean something to you?

A. I never watched it.

MR. BAINE: Neither did I.

Q. Did you know that the idea behind it was just people in a town doing a lot of sexual things?

A. Not really, I don't watch much television and so I don't know much about that show.

Q. If you pick up a typical newspaper, magazine or book would you expect to find one or more articles dealing in some way or

another with sex?

MR. BAINE: Objection to the form of the question.

A. No.

Q. You don't think sex is one of the major areas that appears in print and newspapers and movies and television?

MR. BAINE: Objection to the form. You can answer.

A. I'm sorry, your question again is?

Q. Are you telling us as you sit there that sex is not a predominant part of our mass media?

A. No, I'm not saying that. I thought the question was if I picked up a particular book would I expect to see a story or two about sex.

Q. I'm saying a magazine or a newspaper, would you not expect if you went from the front cover to the back cover to find some reference to sex in some way or another?

MR. KASTENBERG: Are we talking about a specific?

A. I'm not quite understanding the question. I thought the question was if I picked up a particular magazine would I find a story or two about sex and my answer to that question is no.

Q. Are there two words that we hear over and over, sex and violence, in the media? Have you heard them coupled together?

A. Yes.

Q. What does that mean to you?

A. It means that the person uttering that probably thinks there's a lot of it.

Q. So whoever says that thinks there is a lot or maybe too much sex and violence; is that right?

MR. DAVID: Object to the form.

Q. Go ahead.

A. I suspect that's what they mean, but I don't know.

Q. Do you think there's too much sex and violence in the media?

MR. BAINE: Does he think so?

A. No, I never said that.

Q. Do you think there is?

A. I think there's a lot.

MR. BAINE: He's not finished with his answer.

A. I think there's a lot.

Q. Do you think if there's a sexual angle to something that that would have more interest to your readers than if there isn't a sexual angle all of the things being the same?

MR. BAINE: Objection to the form of the question and to the term "something".

A. Okay, so the question is?

Q. If you have a sexual angle to a story do you think that would have particular interest to your readers?

MR. BAINE: Objection to the form. Now you're asking a hypothetical question and really giving none of the facts and circumstances of the hypothetical question, so I'm going to object to the form of that hypothetical.

Q. Would you answer please?

A. Not necessarily.

Q. So that what you're saying is that when you're looking for something to write about, the fact that you can give it a sexual angle is not something that you would consider in order to get better interest from your readership?

MR. BAINE: Objection as to the form.

A. You mean me personally? No, I don't look for sexual angles in the stories I write.

Q. Are you familiar with The National Inquirer?

A. Yes.

Q. What do you know about The National Inquirer?

A. It's a tabloid.

Q. What is a tabloid?

A. They often have very catchy, outlandish headlines.

Q. A lot of sexy things?

A. I can't comment.

MR. BAINE: Are you asking about The Inquirer or a tabloid

in general?

MR. ANGINO: Either or both.

A. The quantity I can't comment on, but that is a topic.

Q. You're familiar with the word "sensationalize"?

A. Yes.

Q. Would you say tabloids sensationalize stories?

MR. BAINE: All tabloids you're asking about now?

MR. ANGINO: Yes.

A. I wouldn't say all tabloids, no.

Q. Would you say The National Inquirer sensationalizes stories?

MR. BAINE: Objection to the form. You haven't laid a basis for him knowing about The National Inquirer.

Q. Do you know about The National Inquirer?

A. What I see at the check-out counter.

Q. In fact when you go out of a supermarket this is the common

place for tabloids to be appropriately placed; is that right?

A. Generally.

Q. Do they generally have sensational type headlines and covers?

A. They don't have the same headlines that appear in publications I have worked at.

Q. Would you answer whether they have sensational headlines?

A. I don't know whether they're sensational or not.

Q. Do you know what the word means?

A. Yes.

Q. What does the word mean?

A. It means aberrational, catchy, flashy.

Q. Aren't those the headlines in the covers of The Inquirer and similar tabloids that appear at the checkout counters?

A. Some I would say fit that category. Others, no, I wouldn't say that.

Q. In the category of priorities what would you put as Number

1 as being the most important to make a story newsworthy?

MR. BAINE: Objection to the form. Are you asking him what is the character of the things that are being reported on it that makes it newsworthy or the thing that he puts into his story? I'm not sure what the question asks for.

Q. What would the subject matter be, whether it be persons, places or things, that to you would be the most important in making something newsworthy?

MR. BAINE: You want him to rank those three things? Person, places and things?

Q. No. I'm saying what comes to mind to you Number 1 as making something important?

A. It just varies from story to story, even from beat to beat.

Q. Back in Florida, the first job, Joe Doe plumber's son brought a lawsuit because his fingernail was broken in an automobile acci-

dent; does it sound like a story?

A. That may or may not be a story.

Q. The mayor brought a lawsuit because he was in an automobile accident where his fingernail was broken. More of a story or the same degree of story?

A. I'm sorry?

Q. More or same degree of a story than the plumber's son?

A. That's apt to be more.

Q. Because of the person; is that right?

A. In this instance.

Q. Somebody killed, more of a story or less of a story than the fingernail?

MR. BAINE: Are the facts the same? Same automobile accident, same person killed versus fingernail injury, which is, now your question is which is more?

MR. ANGINO: More of a story.

A. If someone is killed in an accident.

Q. So what it is is the person is important; is that right?

A. No, no, no. Going back a couple of questions you asked me to prioritize place, person, thing. I said it depends on the circumstances. It depends on the story.

Q. One of the circumstances is the person?

A. No, not necessarily. If in the case of a plumber's son, if there had been a lot of accidents at this one location, the fact that there had been a lot of accidents might make it a story, not what happened to him, not to the extent of the injury.

Q. That's another factor, but I'm saying in the scheme of things as a person there may be the extent of the injuries, there may be the fact that this particular location has a number of accidents, it may be that it has a number of accidents because the City hasn't done a certain thing with regard to that particular traffic light. Are we talking about various factors that can make a story?

A. Always.

Q. After all this questioning are you willing to accept the fact

that the notoriety of the person is one of the important factors?

A. Of what makes a story?

Q. Yes.

A. Well, again it depends on what that person is doing. In and of itself?

Q. In a vacuum.

A. In a vacuum?

Q. Yes.

A. I don't understand the question.

MR. BAINE: I don't understand the question. If there is a vacuum?

Q. If all we have are a set of facts and the set of facts are the same, the set of facts apply to President Clinton, the set of facts apply to the plumber's son, wouldn't you admit that the story would more likely involve Clinton?

A. If the President was involved in an accident, we would write a story about it.

Q. Even if his fingernail was broken?

A. Of course.

Q. Even if he wasn't injured?

A. Probably so.

Q. So the person does have a part to play in the story; is that right?

A. Yes.

Q. Thank you.

The second area may involve the subject of the story; is that right?

MR. BAINE: Objection to the form of the question. You've characterized as the second.

Q. I didn't mean it in terms of second in priority, just second that we are going to talk about. A second area that I would like to discuss with you might be the subject matter.

MR. BAINE: Okay, that's not really a question yet.

Q. Is sex an interesting thing to many readers from your journalistic experience?

MR. BAINE: We can probably stipulate that it is an interesting thing, Mr. Angino, but I think you're asking whether in his experi-

ence readers find sex an interesting thing to read about in newspapers and magazines.

MR. ANGINO: I'll accept that.

Q. Will you answer that?

A. It is a popular subject.

Q. So, certain celebrities are popular, sex is popular; is that right?

A. Yes.

Q. Would you agree that unusual things are popular stories?

MR. BAINE: Objection to the form of that.

A. I don't know what you mean by that.

Q. We read about floods, we read about catastrophes, we read about tragedies. Those are what I'm referring to being unusual.

A. Well, I wouldn't characterize them as unusual, but we write about them.

Q. Because, what?

A. Generally they have a big impact on the people that are

reading your stories or on their town.

Q. Or on the world or on the country or whatever and it goes back to if a dog bites a man, dogs bite people every day; do they not?

MR. BAINE: There's another principle that you went through before. I think you're violating, Mr. Angino.

MR. ANGINO: What's that?

MR. BAINE: By your hypothesis floods are unusual, floods are interesting, therefore unusual things are interesting, that seems to be the logic of your questions and I think there's a problem with that.

Q. Would you agree that more dogs bite men than men bite dogs?

MR. DAVID: Objection. There is no predicate for him having any knowledge about how many men bite dogs.

Q. Would you be able to answer that question?

A. Probably.

Q. What do you think is more common?

MR. BAINE: We'll stipulate that more dogs bite men so we can move this.

Q. So if you accept as a hypothetical that oftentimes in introductory journalism there's even a little picture of a dog biting a man and next to it a man biting a dog—

MR. BAINE: I think you asked him about this.

MR. ANGINO: I know. I'm proceeding and obviously we are proceeding because I want to get the witness to say if it's accurate that something that is not common may be newsworthy. Would you agree?

A. Something that isn't common?

Q. That isn't common.

MR. BAINE: May be newsworthy?

Q. May be newsworthy?

A. Yes, but dogs biting men is common and often get written about.

Q. But what we are saying is it would be more newsworthy if a man bit a dog; would it not?

MR. BAINE: Objection to the form.

Q. Would it not? It would be strange; wouldn't it?

A. Yes, I guess it would be, yes.

Q. It would be strange, you know, say, "Hey, this is a strange situation, this man went over there and bit that German Shepherd"; right?

A. So I took that as literally the case?

Q. You never took it that way?

A. No, no.

Q. But if tomorrow when you go back to New Jersey and somebody calls you up and said, "You know what happened, the mayor of the town bit a dog", would you want to look into that?

MR. BAINE: Would Johnnie Roberts, news reporter, want to look into that?

A. No.

Q. But if Johnnie Roberts were in Florida he wouldn't want to look at that?

A. No, I never, no.

Q. How about the mayor of your town when you're in Florida having sex with a 12-year-old, would you want to look into it?

A. Me personally?

Q. As a reporter, when you go back to Florida?

A. No.

Q. Wouldn't want to look at it?

A. No.

Q. Well, we'd better move you along. Through your career here how long were you in Florida?

A. I was born there, so I left in—

Q. I'm sorry, I had you working for a newspaper on a full-time basis with one year approximately covering the courts. How long did you actually work at that newspaper?

A. Roughly the fall of '77 until spring of '81.

Q. So you worked there for four years; is that right?

A. Yes.

Q. You worked there for four years as a reporter?

A. Yes, I did different things, but generally yes, it was as a reporter for most of that time.

Q. Which period of that time was that approximate year that you were covering the courts?

A. First, I don't know that it was about a year it could have been some months. I don't know what it was, I don't know, I don't remember.

Q. Sometime during those four years?

A. Yes.

Q. Can you tell me what you were doing for the other three years?

MR. BAINE: Objection. You keep assuming it was one year. He said that was the outer limit, it's not more than a year.

Tell him what else you were doing during that time.

A. I covered police, I covered education, housing, transportation, did some investigative stories, some politics.

Q. How long did you cover the police as your beat?

A. A short time. I don't remember precisely, but a short time.

Q. Now when we refer to "beats", if you have a particular beat are most of your stories, if not all of your stories, pertaining to that beat?

A. Most of them.

Q. So if you're covering the courts most of your stories are dealing with the courts or dealing with a police beat most of your stories are dealing with police. If you're covering with an educational beat most of your stories would be about education; am I accurate?

A. Generally.

Q. In each of these areas there are particular idiosyncrasies that you would eventually become familiar with; is that right?

MR. BAINE: Objection to the form of that question?

A. I don't understand.

Q. If you're dealing with housing there are potentially certain laws that apply to housing, there are potentially certain concepts that apply to housing such as the right of the poor to have housing, that's what I'm talking about. So if you're dealing with a particular area it might have its own nuances; is that correct?

A. There are things peculiar to it.

Q. I'll accept that. Things peculiar to it?

A. Yes.

Q. The law would have things peculiar to it?

A. I don't know about the law. I'm not sure what you're asking me now.

Q. Torts and contracts, you're more likely to see that when you're covering a beat that deals with the law than you are if you're dealing with housing; is that not correct?

A. Probably.

Q. So legal terms obviously would be more peculiar to the law, housing terms would be more peculiar to housing, education terms

would be more peculiar to education?

A. Generally that's correct.

Q. And each of these areas has his or its own experts, people who know about housing or people who know about law or people who know about the police; is that right?

A. That's generally correct.

Q. When you dealt with these different areas would you learn who would be knowledgeable in those areas?

A. Generally.

Q. If you wanted to talk about things dealing with the law you talked, you mentioned there were lawyers to talk to, if there were housing there'd be people you'd be able to respect and consult with?

A. Generally so.

Q. So that in each of these areas there would be—let's take a break.

(Recess taken 10:15 a.m. to 10:20 a.m.)

Q. Mr. Roberts, each of these areas that we talked about, from your experience as a reporter working in Florida potentially involved

with what we will call writings, we mentioned as an example in the court area Complaints and the police area obviously police reports, in the housing area certain laws that might apply to housing or certain contracts that might apply to housing, would you agree that it's common that when you were covering beats or doing reporting that you are dealing with writings?

A. This is the source material?

Q. As source material.

A. Yes.

Q. If whatever your article deals with has a basis in a writing is not the writing the most important source?

MR. BAINE: Objection to the form. That's a very broad and vague question without any specifics, so it's a little hard to answer that.

A. It may or may not be.

Q. If we are talking about what a lawsuit is about or what a Complaint says would not the most important source be the Complaint if that's the story?

A. In many instances, yes. In others, no.

Q. When yes, when no?

A. Well, if it's just about what it's about, if it's a lawsuit growing out of a business dispute, if I talked to both lawyers who said it grew out of a business dispute I probably wouldn't necessarily need the Complaint.

Q. But if you were going to reference in something that you were writing that the suit alleges or that a person in a suit alleges, wouldn't you need the Complaint?

A. In many instances I would want the Complaint. In other instances, again, if there was complete agreement among representatives of both parties, not necessarily.

Q. Even though that complete agreement differed from what the suit said?

MR. BAINE: Objection to the form.

A. I don't understand.

Q. I think what you are saying is if you talk to the Plaintiffs and

the Defendants and they have complete agreement as to what the suit is about you wouldn't need the Complaint. Is that what you are saying?

A. What I'm saying is if I talked to you and you said it was about A and I talked to the other lawyer and he said it was about A, I—

Q. You would know it's about A?

A. I would know that.

Q. You would appropriately say the suit was about A without looking at the Complaint?

A. I think I could.

Q. Now, if Lawyer A says it's about C and Lawyer B says it's about X then you'd have to have the Complaint?

A. I would probably in that instance want to have it in front of me.

Q. Now in terms of sources the Complaint under those circumstances is a source; is that right?

A. Yes.

Q. Lawyer A is a source; is that right?

A. Yes.

Q. Lawyer B is a source; is that right?

A. Yes.

Q. The parties themselves are sources?

A. Yes, any of these are potential sources, yes.

Q. Any of these are potential sources. What about another newspaper that writes about that lawsuit; is that another source?

A. Potentially.

Q. It's another potential source?

A. To the extent I might have learned that there was something deemed to be newsworthy, a lawsuit or dispute, I might have first red it in another newspaper.

Q. Right. And would you assert that the suit involved A just because another newspaper said it involved A?

A. No.

Q. You would want better sources than that; is that right?

A. I would just report the story.

Q. But you would want better sources than just what another newspaper said?

A. Just what that newspaper said, yes.

Q. You would want better sources?

A. I'd want other sources.

Q. After 1981 where did you go?

A. Wall Street Journal.

Q. In what capacity?

A. I was a writer.

Q. Writing what types of articles?

A. In general, business and finance, different beats.

Q. What were the beats?

A. Financial services industry, high tech, education, regional economy, retailing, financing, telecommunications, entertainment and media, mergers and acquisitions, consumer electronics, maybe a couple more.

Q. You were there from when to when?

A. From '81, mid-'81 to late '84.

Q. Entertainment and media?

A. I'm sorry, late '94.

Q. So you were there for 13 years approximately?

A. Yes.

Q. Entertainment and media, are you talking about celebrities?

A. No.

Q. What are we talking about?

A. The biz in show biz.

MR. BAINE: Can we make sure the reporter understands that.

A. The business side of the entertainment media industry that entailed coverage of macrodevelopments in the industry, consolidation of the entertainment and media industries, the mergers and the takeovers, it entailed strategic developments at companies and in those industries. It entailed the management of those companies, the strategic directions of those companies, the finances of those companies.

Q. When you were working in Florida you were writing for a particular type of audience; is that right?

A. The local readers of the newspaper.

Q. Local readers. What was the circulation?

A. I vaguely recall it was somewhere in the range of 300,000.

Q. When you write for a local newspaper you write stories that would be of interest to the local readers; is that right?

A. Generally.

Q. When you went to The Wall Street Journal what was the circulation of The Wall Street Journal?

A. I think the high was somewhere in the range of two million, something like that, I think I'm—don't hold me to that.

Q. Would the demographics be the business community?

A. It would be broader than the business community.

Q. What would be the audience?

A. It was a high demographic. High net worth whatever that is.

Q. High net worth?

A. Affluent, I should say, highly educated. It includes the business community, professionals, but also it skewed to that, but it included just everyday, average, John and Jane Doe.

Q. In terms of the local community would it include—as an example, the area of Florida that you were in approximately, what would have been the ethnic make-up there?

A. Well, it was something less than, I think, 30 percent African American, mostly predominantly Caucasian.

Q. You would expect your readership to be similar to those demographics when you were writing in Florida?

A. It was a local community.

Q. How about Wall Street Journal as far as ethnicity?

MR. BAINE: Of the readers of The Wall Street Journal?

MR. ANGINO: Right.

A. The ethnic makeup?

Q. Yes.

A. I'm clueless about that.

Q. Where did you go from The Wall Street Journal?

A. To Newsweek.

Q. So when you're working and writing in Florida, you're writing things that would be of interest to the local readership. Wall Street Journal, writing things that would be business-oriented?

A. Yes.

Q. Of interest to the business community?

A. Not just the business community, that was part of it.

Q. You use the word "affluent", of interest to people of wealth?

A. I mean without—

MR. BAINE: I'm going to object to the characterization of the testimony. His testimony is quite clear. Don't ask him another question. You may—he indicated that the readership is broader than the business community itself. I clearly read The Wall Street Journal

and I'm not a businessman.

MR. ANGINO: I think you are.

MR. BAINE: I don't think what you mean by the business community—

Q. Business community entails a variety of—law is a business, medicine is a business.

A. I don't know what you're asking.

Q. I'm not asking anything. When we are talking about readership and when we are talking about journalists, the goal is to sell papers or magazines; is it not?

A. Well, it is a business.

Q. So the goal is to sell papers and magazines?

MR. BAINE: The reporter's goal?

MR. ANGINO: Yes.

A. No, that's not my goal. My goal is to write stories that I think are of interest to the readers. There's other people concerned with selling that.

Q. But if the readers aren't interested in what's being written will they buy it?

A. I suspect not.

Q. If the readers don't buy, you don't have a job; is that right?

A. Well, yes, in the publications that I worked at, there are different publications, some really, well, no need to get into that.

Q. Some might stress how important the stories be interesting to the type of readership that you have; is that right?

A. Well—

MR. BAINE: Objection to the form, "some might".

MR. ANGINO: He was about to answer that.

MR. BAINE: You can answer.

A. I'm about to say some of the stories that I've written in my career have been wholly uninteresting, but were deemed to be important to the readers.

Q. Have you ever been criticized because of the fact that what you were writing might offend somebody?

A. Have I ever been criticized for that?

Q. Yes.

A. Not that I recall.

Q. Let's move on to Newsweek, 1994; is that appropriate?

A. That's when I joined.

Q. What was the reason of leaving The Wall Street Journal to go to Newsweek?

A. I was offered a job at Newsweek.

Q. Was it one that paid more money?

A. Did it pay more money?

Q. Yes.

A. Yes, it paid more money.

Q. Did you leave for the money or for some other reason?

A. I didn't leave for the money, it wasn't that much more.

Q. What was the reason?

A. One, I had been at The Wall Street Journal for somewhere between 13 and 14 years. It had been a great challenge, I had a had a wonderful career there and I wanted to try something else.

Q. Did you apply or did somebody recruit you?

A They recruited.

Q. Have you worked in different capacities for Newsweek or in the same capacity?

A. What do you mean?

Q. You've been a reporter, I assume you don't have beats as a reporter or do you for Newsweek?

A. I have a beat.

Q. You have a beat, okay. What is your beat?

A. Basically media and entertainment.

Q. In a different way than media and entertainment for The Wall Street Journal?

A. Not really.

Q. Same? If I were to look at your columns over the last four years would most of them deal with celebrities?

A. No. I write about the business side of show business.

Q. The business side of show business?

A. Meaning entertainment and media.

Q. Do you have a column with each Newsweek story, each Newsweek publication?

MR. BAINE: I'm going to object to the form of the question. Specifically the use of the word "column" might mean different things to different people.

Q. Do you have a story or a by-line or some part of each Newsweek publication?

A. No.

Q. So you don't write something that appears every week in Newsweek; is that right?

A. That's correct.

Q. Approximately how many stories would you have in a year?

A. It varies. It really varies.

Q. Give me the range please.

A. It is very hard to do that. I try to be in the magazine as often as I can.

Q. I mean you must know whether it's ten times a year or 30 times a year.

A. Well, I would say it's certainly more than ten times a year,

but beyond that it's very difficult to say for a variety of reasons.

Q. Is there a particular place where all of your stories for the past four years are housed?

A. Generally, yes.

Q. So I'm going to ask you and your attorney if you will give me a copy of all of your stories; okay?

MR. BAINE: We'll look into that.

MR. ANGINO: If that's any problem, I'll make a motion to produce.

MR. BAINE: Okay.

Let me make sure that the record is clear on one thing. You asked the question whether there is a particular place where the stories are placed, you're asking not where they normally appear, I think you may have particularly meant where they are all kept?

MR. ANGINO: Yes.

MR. BAINE: That's—

A. I thought you meant do they appear in a different section of

the magazine.

Q. Then there is confusion.

What I'll suggest to you is that you have written stories and you've written them over a four-year period of time. When I use the word "housed", I'm talking about if you wanted to find out what stories you have written over the last four years you would be able to get them either by way of a computer or by way of something; is that not correct?

A. Stories that I've written are available.

Q. Through some means; is that right?

A. Yes.

Q. That's what I'm talking about.

MR. BAINE: Okay.

Q. We'll facilitate the deposition if I see the stories, then I don't have to ask you about all the different topics and the people and the individuals that may have been discussed and the circumstances.

MR. ANGINO: So if we can do that we can foreshorten this to

some degree. Let's ask therefore some questions about a particular document that was supplied to me called "researcher's manual" and do we have a copy that we can mark as a record?

MR. BAINE: You can mark that as an exhibit.

MR. ANGINO: We'll call this Roberts 1.

(Roberts Exhibit 1, researcher's manual, marked for identification.)

Q. Mr. Roberts, I'm showing you what had been marked yesterday as Time Warner Number 2. Do you see that?

A. Yes.

Q. It says "code of ethics", do you see a society that is mentioned there?

A. Yes.

Q. What society is that?

A. Society of Professional Journalists.

Q. Are you a member of that society?

A. No.

Q. Do you know whether or not Newsweek is?

A. No.

Q. Have you ever seen a code of ethics for The Society of Journalists?

A. Have I had this in my possession before?

Q. Have you ever seen that before?

A. Maybe.

Q. Where did you see it?

MR. BAINE: He said maybe.

Q. If you might have seen it, where did you see it?

MR. BAINE: Objection to form. That's a hard one.

Q. Did you know that there was such a thing as a code of ethics?

A. No.

Q. I show you what was marked Time Warner 3, this was a 1987 version of that. Have you ever seen that?

A. No.

Q. Time Warner produced, and we are not going to go into it, something they called "editorial guidelines". Is there such a thing at

Newsweek?

MR. BAINE: Objection to the form of the question. If you're going to make part of your question a reference to a document and ask him whether there is such a thing he has to be able to see the document to answer the question. I guess you should refer to it without talking about the document or—

MR. KASTENBERG: If you're going to go into the area we want to, as a courtesy, let Milt know.

MR. ANGINO: That's why I won't do a thing, so I will get away from that.

Q. Is there any type of document that you have ever seen at Newsweek that deals with what writers or journalists should or shouldn't write about other than what has been marked Roberts Number 1?

MR. BAINE: Objection to the form of the question, but you may go ahead and answer.

A. I vaguely recall there may have been a memo distributed that touched on what writers do.

Q. Have you seen what we've marked as Roberts Number 1?

A. I vaguely recall having seen this, vaguely.

Q. Have you gone over this with your attorney?

MR. BAINE: Objection to whether or not he's had a communication with me.

Q. Not a communication. Have you gone over it?

MR. BAINE: You can ask whether he went over it in preparation for the deposition. You can ask him that.

Q. Have you gone over this in preparation for the deposition?

A. I've seen it.

Q. In preparation for the deposition?

A Yes.

Q. Have you seen, during the four years that you've been with

Newsweek, a memorandum which is not contained within this?

A. I'm not sure of your question now.

Q. For instance, what I was supplied with today was this researcher's manual and there is something in the back that carries a date. Is that something different?

MR. BAINE: Let me explain something here, you have three different documents under one paper clip. If you want to ask if he has seen them—

MR. ANGINO: Let's make them a separate document.

MR. BAINE: You can make it 2 and 3.

(Roberts Exhibit 2, document, marked for identification.)

(Roberts Exhibit 3, document, marked for identification.)

Q. We've shown you Roberts 1, 2 and 3. Had you ever seen anything else that dealt with ethics or what journalists should or

shouldn't write about other than these three documents at Newsweek?

A Not that I recall.

Q. With regard to Roberts Number 1, researcher's manual, there is a heading called, "The science and art of checking stories"; is that correct?

MR. BAINE: It's on Page 9.

Q. Page 9.

MR. BAINE: That's a partial reading of the heading, it's okay for now.

Q. And it states, "Why we fact check to insure that stories in Newsweek are true accurate and fair"; is that right?

A. Correct.

Q. And am I correct that "true", "accurate" and "fair" are emphasized, those words, those three words?

MR. BAINE: You mean emphasized like in bold?

MR. ANGINO: They're in bold in mine.

MR. BAINE: I can't tell. Do they appear bold to you or not?

You have the original.

THE WITNESS: In the original they do appear bold.

A. Yes.

Q. Would you agree that a journalist should attempt to ensure that the stories in Newsweek are true, accurate and fair?

A. I agree.

Q. Then "true" in the next paragraph is again in bold; is that right?

A. Right.

Q. "True in that events happened as we described them, that people are as we described them, and said what we directly or indirectly attribute to them"; is that correct, is that what it says?

A. That's what it says.

Q. They actually then go on and say, "Accurate in that all the facts that can be checked have been verified and the best available sources and are correct, fair in that our story is balanced and we have

not admitted material or used material in a way that makes the story misleading."

MR. BAINE: I want to make sure the Reporter has "omitted material", not "admitted material".

MR. ANGINO: She'll correct any reference to these to make sure that she has it correct.

Q. It then goes on to, "Finding, using and evaluating sources of information."

MR. BAINE: "Sources and information"; is that right?

A. Yes.

Q. If you go on to Page 10, the bottom, it says, "Do not let any, quote, first, quote, or superlative go unchallenged", and then discusses books and specific areas, music, science, American history, et cetera.

When we go to the next page, Page 11, it says, "Writers say so. Sometimes information stated by the writer, such as the plot of a book, and an event he/she has witnessed is drawn from the writer's

own experience and may have to be taken on the writer's say so, but beware writers can confuse characters, incidents or misspell names."

MR. BAINE: "Characters or incidents."

MR. ANGINO: Thank you.

Q. "How much you can accept on the writer's authority and expertise is something you will learn with experience. Check whatever is checkable. It's always better to do too much checking than not enough", is that what it says?

A. Yes.

MR. BAINE: That's what—that is a partial reading. It goes on.

MR. ANGINO: Right.

Q. "For those points taken on the writer's authority put the writer's initials in the margin of your checking copy to indicate he/she takes responsibility for the accuracy. In cases where a writer is expressing his own opinion, and this will come up frequently in reviews, underline the text on the checking copy with a wavy line

rather than a straight line and put the writer's initials in the margin", is that what it says?

MR. BAINE: Initials, plural, that's what it says.

Q. "Subjective assertions. In addition to verifying facts, a researcher must ask him/herself while checking a story if the evidence available in correspondence files, news clippings and other sources supports the generalizations, allegations, inferences and conclusions the writer has drawn. If the researcher thinks that the evidence does not support what the writer is saying he/she must raise the point with the writer. If the researcher and writer can't come to an agreement, the researcher should bring the problem to the attention of the senior editor."

Appropriately read?

A. Yes.

Q. "Omitted information, likewise if the researcher feels that information has been omitted that makes Newsweek's story misleading he/she must raise the point with the writer. Again if the re-

searcher and writer can't come to an agreement the researcher should bring the problem to the attention of the senior editor."

Appropriately read?

A. Yes.

Q. "Anticipating legal concerns. If you are assigned to a story with potential legal concerns, alert the head researcher of your department and the law department as early in the week as possible. If in doubt about possible legal concerns in a story ask", and there is an exclamation point; is that right?

A. Yes.

Q. "It's always better to raise questions before—", and is "before" emphasized?

A Looks like it.

Q. "—than to be sorry afterwards."

Is that right?

A. Yes.

Q. "Reported stories.

Accountability for information provided by a correspondent

rests with the correspondent. It's the correspondent's job to report accurate information including correct titles and spellings of names of people he/she has interviewed."

Goes on to say, "Often a correspondent will interview average citizens", and then discusses things there. "The file is our own source, however, researchers will fact check all information that can be checked independently. In the case where a story or information has been published and the researcher notices a discrepancy with the correspondence file he/she should bring the discrepancy to the—"

MR. BAINE: Well, you skipped a couple of lines.

MR. ANGINO: Yes.

MR. BAINE: Okay.

Q. "Information within quotes. Factual information within a direct quote must be checked just like any other factual information. Expert opinion, personal experience and insider knowledge within a quote need not be checked"; is that correct?

A. Yes.

Q. When they refer to researchers and head researchers and others can you tell me what we are talking about? Would you be considered a researcher?

A. No.

Q. Let's discuss what happens chronologically at Newsweek with respect to you and the preparation and the publication of a story. Could you tell me the typical processes of what you do from the time you get an idea for a story up until the time it's published?

A. Well, I would discuss it with my immediate editor, the idea.

Q. Who would that be?

A. Mark Vamos. If the idea is approved I would report it, that is, gather the information, maybe I would talk to him along the way just to consult. I would write the story, I would turn it in to him, he would edit it, decisions would have been made prior to that about the space, the size of the story. I would write it, turn it in to him, he'd

edit it, it would be passed along to a couple more editors, any questions they had about the story I would address. It would go into the magazine.

Q. Let's proceed with what we will call the Tupac Shakur story that carries a publication date of September 1, 1997 which I understand was on the newsstands August 25, 1997.

What is your recollection as to the first thing that happened?

A. Well, I was informed by a colleague—

Q. Who is the colleague?

A. Richard Turner.

Q. Where does he live? Is he a Newsweek colleague?

A. Yes.

Q. And is he a journalist?

A. Yes, but I was informed that a source of his would be in touch with me about a possible story regarding Tupac.

Q. A source of his?

A. Yes.

Q. A source of his would be in touch with you?

A. Yes. The public relations person.

Q. I'm sorry, is Turner—I may have asked this question, but if I did excuse my senility. Is he a journalist?

A. He is a colleague of mine at Newsweek. He is a writer.

Q. He is a journalist?

A. He's a journalist.

Q. What was the public relations that you were mentioning there?

A. It was a public relations representative.

Q. Somebody else?

A. Someone else outside of Newsweek.

Q. Outside of Newsweek there was a public relations individual whose name is?

A. I recall that his name was Sean Cassidy.

Q. Can you spell Sean?

A. I think it's S-e-a-n, but I can't be certain of that.

Q. Cassidy. And where is he and what does he do?

A. He is in New York, he's with a public relations agency the name of which escapes me now.

Q. Is this someone Turner knows?

A. I'm not quite sure of the relationship. They had some past contact.

Q. So he said, "Sean Cassidy is going to be in touch with you", is that what I understand?

A. I vaguely recall that's how it was.

Q. Continue.

A. About a possible Tupac story.

Q. Did you know who Tupac was?

A. Yes.

Q. Can you tell me how you knew who he was?

A. Yes, he's an entertainer.

Q. Just from?

A Just general knowledge. I was familiar with his music.

Q. You knew he was an entertainer, all right. Go ahead.

A. At some point I was or contact was made between me and Sean Cassidy.

Q. In person, over the phone?

A On the phone, by phone.

Q. Any tape made of that conversation?

A. Tape? What do you mean?

Q. Was there a tape of the conversation?

A. Did I record it?

Q. Yes.

A. No.

Q. Any notes of that conversation?

A. I don't remember there being any notes.

Q. As part of your years of experience working for the various publications were you taught the importance of making notes of conversations?

A. Yes.

Q. Is there some reason you did not make any notes of your conversations with regard to Cassidy?

A. Yes.

Q Why?

A. I wasn't reporting the story. It was just an idea. He was communicating a possible idea.

Q. So just something that is being discussed that may or may not become a story; is that what you are saying?

A. Correct.

Q. Approximately when did you talk to him?

A. That's a hard one. It was within days, within weeks of my starting, within a couple of weeks of my starting to work on a story. I just don't know—I don't know.

Q. Is your best estimate a couple of weeks?

A. I don't know.

Q. Somewhere from days to a couple of weeks?

A. Yes, fair enough.

Q. Go ahead.

MR. BAINE: What's the question?

Q. What next happened? What did he tell you?

A. He told me that there were, in the approximate year since Tupac's death, that there had been a number of lawsuits, a number of legal actions involving the estate and that his client was involved in a bit of that legal action.

Q. Who was his client?

A. Richard Fischbein or I should say either Mr. Fischbein or the law firm Mr. Fischbein is associated with.

Q. So what happened was that we have a public relations individual contacting media, being Newsweek, saying, "We have a potential story and the origination of it is that there is a lawyer by the name of Richard Fischbein who is involved with a number of lawsuits"; is that correct?

MR. BAINE: Objection to the form of the question.

MR. DAVID: Objection to the form.

MR. BAINE: You asked him what was said and he gave you his

best recollection and now you're kind of using your own words and asking him to adopt your words and I think it's best he use his words to describe the conversation.

MR. ANGINO: I'm just trying to make it clear.

MR. BAINE: You have the identities.

A. What was the question?

Q. Basically you understood that this public relations individual had a client by the name of Fischbein; is that correct?

A. That was my understanding, yes.

Q. Did you ask how a lawyer would be a client of a public relations firm? Did you ask that question?

A. No.

Q. But this is what was told to you?

A. This is my recollection.

MR. BAINE: Objection to the form of the question. You said, "This was told to you."

Q. That Fischbein was a client of this public relations person?

MR. DAVID: Object to the form.

Q. That's what was told to you; right?

A. From the conversation I came away with the impression that Mr. Cassidy represented Mr. Fischbein or Mr. Fischbein's firm.

Q. And Mr. Cassidy said there might be a good story?

MR. BAINE: Objection to the form.

MR. DAVID: Objection to the form.

A. I didn't say that. I said that there had been a number of legal actions that might make for a story.

Q. What else did he say?

A. That there was some paperwork that was relevant to these legal actions that if I were interested in following up his client would be available.

Q. Okay.

A. That if I wanted some of his paperwork it could be provided.

Q. Okay.

A That's pretty much it.

Q. That was that conversation?

A. As I recall.

Q. What did you say?

A. I said I'd think about it or, "Send over the papers", or yes, may be a story, may not be a story, I don't know precisely, but it was along those lines.

Q. On June 5, 1998 there was a letter from—

MR. BAINE: You mean 1997?

MR. ANGINO: 1998.

MR. BAINE: This is our letter to you?

MR. ANGINO: Yes.

Q. On June 5, 1998 there was a letter from Kumiki Gibson to various attorneys, "Dear Counsel, enclosed please find a copy of the documents that are referred to in Defendants Newsweek's and Johnnie L. Roberts' self-executing disclosures", and then it goes on.

MR. ANGINO: Do you have your copy that he can look at?

MR. BAINE: Yes.

MR. ANGINO: The whole file?

MR. BAINE: Sure.

MR. DAVID: Can we have a copy? If you are going to mark an exhibit I'd like to have a copy of it.

MR. ANGINO: Well, it wasn't to Richard Angino.

MR. DAVID: I'm not supposed to guess what you're marking into the record and make sure that I guess you're supposed to make copies for the rest of us.

MR. KASTENBERG: I would specifically note that there was a—I expressly request that you make sufficient copies of any exhibits we're going—

MR. ANGINO: You can say what you want. Your objection is preserved, all right? I don't have copies for you, all right?

Q. Do you have it in front of you?

A. I have this in front of me, yes.

Q. What we have here is what? Can you kind of go through it and tell me what it is?

MR. BAINE: You want him to go through the whole pile? We made a representation of what it was, our representation is accurate. If you want him to confirm that that's accurate, you know, he can do that.

Q. Do you know, have you had a chance to go through this in preparation for this deposition?

MR. BAINE: I don't think the witness has in preparation for the deposition turned every page of that, so he can tell you what was with my letter. I am telling you what was in my letter, as with Ms. Gibson's letter, is accurate, Richard.

Q. It says it's Mr. Roberts' notes and resource materials 006-0187.

MR. BAINE: Okay, let's have him look at that. You want to ask

whether those are his notes and resource materials?

Q. That is my question.

MR. BAINE: Go ahead, you can answer that question.

A. Yes.

MR. KASTENBERG: What page?

MR. ANGINO: 0006-0187.

Q. Can you tell me how you acquired that material?

A. All of it or some of it?

Q. All of it.

MR. BAINE: You'll have to go item by item.

A. Well, six is a product of my reporting.

Q. Now you say "reporting"?

A. Reporting.

Q. Now, let's take—

A. 6 through 17.

Q. All right. 6 through 17 and we'll break it down into categories. By "reporting", what do you mean?

A. I would call up people associated with the story and interview them and take notes.

Q. Do you have your notes?

A. Yes.

Q. These are the notes?

A. Correct.

Q. Were they done by means of a computer?

A. I typed them on a computer.

Q. So these are your notes as they've been printed from the computer?

A. Correct.

Q. Then what is 00018?

A. This is a letter written to another colleague of mine, John Leland, by, it looks like the attorney or an attorney representing William Garland, who in this letter is identified as a father of Tupac Shakur.

Q. And this is carrying the date of February 13, 1997?

A. Correct.

Q. How did you happen to acquire that?

A. I'm not quite sure, but in all likelihood my colleague passed this along to me at some point. At some point after he received it.

Q. Let's go back to the chronology here. You said that the first conversation with the public relations individual was somewhere between days and a couple of weeks prior to the story so that we are talking about August of 1997; is that right?

A. That's correct.

Q. Now you had this discussion with this public relations individual and you then said you were going to think about it. What next happened?

A. At some point after the conversation we decided that we'd do a story.

Q. We being?

A. Well, I had the idea and I took it to my editor and it was, basically it was approved.

Q. So you've received this information by way of this telephone

call. Did you have anything further at that point in time when you talked about doing the story with your editor?

A. I'm sorry?

Q. Did you have anything else other than that conversation?

A. I don't—

Q. Well, the individual offered to supply you with certain documents or certain papers; do you remember?

A. Right.

Q. Did you have those papers and documents?

A. When I talked to the editor?

Q. Yes.

A I don't know if I had them in hand then. I may have simply gone to him either directly after that or days after the conversation and said, "There may be a possible story."

Q. That's all I need. So you may or may not have had certain papers when you decided to do a story?

A. No. When I started working on the story I had those papers

to make a decision about perhaps pursuing an idea, no.

Q. That's what I'm saying, that first talk with the editor about potentially doing a story, you may or may not have had the papers?

A. That's correct.

Q. But at least you had from that discussion decided at least to look into the possibility of doing a story?

A. Yes.

Q. What next happened?

A. At some point I decided that I would do a story and it was mostly pegged to the anniversary, one-year anniversary, of the death, of Tupac's death.

Q. Number 1, the person who was involved was somebody who was well-known, Tupac Shakur; right?

A. Correct.

Q. He had been killed; is that right?

A. Correct.

Q. You were approaching the one-year anniversary of his death;

is that right?

A. It was approaching, correct.

Q. Would these three be factors that led you to make the decision to do the story?

MR. BAINE: Were you asking whether those are the exclusive factors or whether those were factors?

MR. ANGINO: Three of the factors.

A. Again, that I knew of these actions, that the year was approaching and—I'm sorry, what was the third?

Q. Tupac, he had been killed, a year was approaching?

A. Yes.

Q. What happened next?

A. Well, I would have started to report the story.

Q. What was the first thing that you recall doing to gather your facts to report the story?

A. Among the first things certainly was getting the papers.

Q. Whom did you contact to get the papers?

A. Cassidy.

Q. I don't want to put words in your mouth, but did you in effect say to Cassidy, "Have Fischbein's office get me the papers"?

MR. DAVID: Object to the form.

MR. BAINE: Object to the form.

A. He said he had access to these papers and I asked him to provide the papers.

Q. Okay, how did those papers get to you?

A. I don't remember how they were delivered. They were delivered.

Q. You're looking at something that looks like—

A. Yes.

Q. —a handwritten note?

A. Yes.

Q. What number does it have on it?

A. 0019.

Q. It happens to be missing from mine.

MR. DAVID: We don't have it either.

MR. BAINE: We can make a copy of it. It is a cover sheet.

MR. ANGINO: Let's make a quick copy.

Q. We are looking now at Newsweek's 00019 and at the top of the page is DKA and then it says, "Dan Klores Associates, Inc. public relations management. Johnnie, here's the information on Tupac Shakur and the litigation facing his estate. Please call Rich Fischbein at 826-2000 on Monday at 10:00 a.m."

Does that look like thanks to you?

A. Something, I don't know.

Q. And then something that perhaps is named Sean Cassidy is however at the Page 3, 86 Park Avenue South, 10th floor, New York, New York.

Can you tell us if the receipt of the documents that followed that particular number up to what has been purported to be your working file, are documents that were then supplied to you from 20

through 187; is that the number?

MR. BAINE: That's right.

A. Yes, I think these are all of the documents and I think they all came at the same time.

Q. So the public relations guy calls you and now has supplied you with documents and he gave you Rich Fischbein's number to call; is that right?

A. That's correct.

Q. He even told you when to call; right, Monday at 10:00 a.m.?

A. Yes.

Q. So that do you have a recollection of when you received this note?

A. No. I mean it would have been somewhere in that time frame.

Q. Have you had an opportunity to check your calendar in preparation for this deposition?

A. No.

Q. Do you know what Monday we are talking about at 10:00 a.m., the date of that Monday?

A. No. I mean it would have been in that time frame, but the exact day, no.

Q. Do Newsweek publications go out on a particular day?

A. Yes.

Q. What day?

A. Well, they go out at different times and I'm not the person in that area, but I think, I mean, I've seen the magazine in the airport on the newsstand Sunday nights and some airports have been in, but, and I think it arrives to subscribers on Tuesday. I think it does.

Q. Well, it's been said the 25th?

A. It's on the newsstands certainly generally the 25th.

Q. But then it then comes off supposedly on the date that is the date that would have been September 1. So let's assume that your article was done, published and on the newsstands by August 25, is it your recollection that this was, this Monday was the Monday before that or two Mondays before that that you were to call Fischbein?

MR. BAINE: Objection to the form.

Go ahead.

A. It could have been the Monday before, the 22nd you mean?

Q. Right.

MR. BAINE: No.

Q. I think if the 25th—

A. The 18th rather, it could have been.

Q. It could have been the 18th. In fact that first conversation with Fischbein do you have the notes from that first conversation?

A. Well, these are all, this is it in terms of notes that I have of my conversations with Mr.—

Q. Where do they start?

A. 00—

MR. BAINE: Fischbein in particular?

A. Fischbein, they start on 0007.

Q. What we see as Number 30, is that what it is?

A. It's the last block of type at the bottom of the page, yes.

Q. I got called probably three days after Tupac was killed.

A. Yes.

Q. The manner in which this has been transcribed, Page 1 of 12, did this come out of your computer in a chronological fashion?

A. You mean the numbering?

Q. Yes.

MR. BAINE: No. That's a confusing question. You're asking whether the interviews are recorded in a chronological order, that's a different question.

A. No. The sequence of the printout is obviously in chronological fashion, but the question is whether the interviews are in chronological order, not necessarily so.

Q. For instance, Monday would have been the 18th presumably. I don't have—

MR. ANGINO: Does somebody have a calendar? If Saturday is the 25th—

Was Monday the 25th?

MR. BAINE: I believe so.

MR. ANGINO: So the other Monday would be the 18th.

MR. BAINE: The previous Monday would have been the 18th.

Q. Now you know you talked to me on the 20th; is that right?

A. I don't know the date I talked to you, but yes, I talked to you, I know I did talk to him, this would suggest definitely I talked to you on the 20th.

Q. Now you're being shown certain phone numbers. Does that also suggest when you first talked to Fischbein?

MR. BAINE: This, of course, would record Mr. Roberts' calls, not calls in to Mr. Roberts.

MR. KASTENBERG: What Bates numbers?

MR. BAINE: Looking the 0191.

A. Says the 18th.

Q. So you first talked to Fischbein on the 18th; is that right?

MR. DAVID: Objection. The witness didn't say that for sure.

A. No, I didn't say that. I'm not sure that I actually talked to him. It shows that the call was all of a minute and eight seconds. 1.8 minutes rather. You know, I may have called the office and didn't get him.

Q. Let's kind of, so we can get our sequence, you have in front of you what is part of Roberts Exhibit Number 4; is that correct?

MR. BAINE: I don't think it has been marked as an exhibit.

MR. ANGINO: Well, we'll mark it as Exhibit 4 and we will supply obviously at the appropriate time a copy other than your copy. That has handwritten notes on it. Just for reference purposes though we'll give it that number, Exhibit 4 Roberts.

(Roberts Exhibit 4, record of telephone call, marked for identification.)

Q. And in order to have a sense of time, is the first telephone call that you have recorded there to anybody dealing with this story

available to you there?

A. There are different times here and there are numbers, toll phone numbers, that looks like.

Q. Perhaps it may make us—I'm looking at 1889 (212) 445-4110 is a phone call to whom?

A. That's my number.

Q. That's your number and was there a phone call made that particular date?

MR. BAINE: Objection. You haven't specified a date. These are the phone records for—phone calls that have nothing to do with this story have been redacted or whited out from this record.

Q. What I'm saying is 188, does it reference any phone call?

A. 188? I don't see any reference to any phone calls on 188.

Q. How about 189?

MR. BAINE: We'll stipulate the first phone call on this exhibit

is reflected on 191.

Q. 191 has a phone call; am I correct, 86 at 2:04 p.m.?

A. 2:04 p.m.

Q. And 685-4500, do you know who that is?

A. Yes.

Q. Who is that?

A. That's Sean Cassidy.

Q. So that having this in front of you, would that indicate when you called Sean Cassidy the first time?

MR. DAVID: Objection.

MR. BAINE: Objection to the form of the question. In the month of August this is the first phone call that is Sean Cassidy.

Q. Do you have any record of what that conversation consisted of?

A. No, no, I don't.

MR. BAINE: It's about 40 seconds long.

Q. The next is 8/13, which looks like 30 seconds; is that right?

A. Yes.

Q. There then was one on 8/15, it appears to be 12 minutes and perhaps 20 seconds maybe?

A. Yes.

Q. Do you have any records or any notes as to the conversation on 8/15?

A. Not that I recall.

Q. There was a follow-up call at 5:57 of one minute eight seconds. Do you have any recollection of that?

MR. BAINE: 1.8 minutes.

A Do I know what was said?

Q. Yes.

A. No.

Q. Another one on the same date at 6:20, .6 minutes; is that right?

A. Correct.

Q. Then there was a call, appears to be 8/18, 10:30 a.m., 826-2000. Do you know whose number that is?

A. 826-2000 would have been Mr. Fischbein's office.

Q. So there was a 1.8 minute call to Fischbein's office on 8/18;

is that right?

A. Correct.

Q. There was {then/than} on 8/20 two calls back to the public relations, Cassidy guy; right?

A. I'm sorry, repeat that.

Q. On 8/20 there were two telephone calls to Cassidy?

A. Correct.

Q. Then there were two calls to Fischbein's office; is that right?

MR. BAINE: On August 20?

MR. ANGINO: Right.

A. Correct.

Q. 5:55 p.m. and 6:05 p.m.; is that right?

A. Correct.

Q. The first one was of 7.9 minutes and the second one was 10.5 minutes; is that right?

A. Correct.

Q. Do you have any recollection of why there appears to be a two- or three-minute gap? Did you pick up another call or something?

A. I don't remember.

Q. But in total you would have talked to who, Mr. Fischbein?

MR. DAVID: Objection.

A. I don't remember. I mean it may have been him on that day.

Q. But it was a conversation or two conversations that consumed about 19 minutes; is that right?

A. That's correct.

Q. Can you tell me what part of the record of 0006 through 00017 pertained to those two conversations on the 20th?

A. What part?

MR. BAINE: You're asking which part of the notes reflect Mr. Roberts' conversations?

MR. ANGINO: On the 20th.

MR. BRINE: With Mr. Fischbein's office?

A. Well, probably the page marked 0007, the bottom there through 000122, last line of the conversation probably being, "Don-

ald David, why I am—"

Q. I'm sorry, what page is that?

A. 000122.

Q. So that was the conversation with Fischbein on the 20th; is that right?

A. Yes, that's probably it.

Q. The conversation with Shaun, is there any recording of what that conversation consisted of on the 20th?

A. No.

Q. When we look at the 20th, the next page, which is 192 has a 40-minute call and a number (213) 624-4246. Who is this?

A. That is probably, that number is—that's the law firm of Reinis & Reinis.

Q. Who are they?

A. They were the law firm representing Bill Garland, who—

Q. You had two conversations with that law firm of approximately 44 minutes?

A. Yes.

Q. Where does that appear on these records?

A. Looks like it starts on 00012.

Q. Where it says "Donald David"?

A. Beneath that.

Q. Do you know what the words "Donald David" appear there for?

MR. BAINE: He said it was the last part of his notes from his conversation with Mr. Fischbein.

Q. What is the reason the name appears?

A. Mr. Fischbein was probably telling me that with regard to certain aspects of these cases I might talk to—

Q. Donald David?

A. —Donald David.

Q. So then the conversation with the law firm went from 00012 through—

A. Through 00015 and it looks like that conversation ended several lines from the top line, beginning, "Afeni walked over"?

Q. And said, "Here's your son"; is that right?

A. That's correct.

Q. The one that starts with, "Globe ex", which conversation was that one?

A. All likelihood that was with Mr. David.

Q. Where does that show up on this telephone—

A. It could be one of these conversations, 0191.

Q. 01991?

A. It could be or it may not be, I'm not sure whether Mr. David called me or I called him for that conversation.

Q. The ones that are here are just 1.7, 1.2; am I correct?

A. Yes.

Q. Do you think any of those were the call that resulted in pages, what, 15 through—

A. 15 through 16.

Q. Are Donald?

MR. DAVID: Object to the form.

A. I think these are the notes from that.

Q. Where do they stop?

A. The penultimate line, 25 or once we've brought—

Q. I'm sorry, that's on 00016?

A. Yes, next to the last line from the bottom.

Q. To shut down 25 or the once we brought to shut down?

A. Yes.

Q. What is the next, what has been the testimony so far, "Can you confide it", what is that?

A. Those are questions that I had written prior to calling one of the parties.

Q. Were they pertaining to a particular claim? Seems to deal with a deadbeat dad; does it not?

MR. DAVID: Objection to the form.

A. It looks like it would have been in preparation for the interview of Reinis & Reinis which is Mr. Garland's representative.

Q. So what we have is Sean Cassidy, we then have Fischbein's office; is that right?

MR. BAINE: You're going through the records starting with Page 191?

MR. ANGINO: Right.

Q. I'm going through 191 which starts with the public relations Sean Cassidy from 8/6 through 8/26; is that right?

Fischbein 8/18 to 8/22; is that right?

A. Again we are just identifying what this record is here?

Q. That's right.

Now, if Fischbein or Cassidy or any of the other individuals here had called you this record would obviously not show that; is that right?

MR. DAVID: Which record are we talking about?

MR. ANGINO: The record we are looking at.

MR. DAVID: The ones having to do with the outgoing phone calls?

MR. ANGINO: Right.

A. Yes.

MR. ANGINO: In response to discovery requests we have asked Fischbein to supply a record of phone calls and the only thing

that was supplied was a calendar notation for the 24th of August; am I correct?

MR. DAVID: I don't believe you are.

Q. Do you have a recollection of meeting personally or talking over the phone with Mr. Fischbein on the 24th of August?

A. I don't recall that, no. Well, let me back up. I certainly didn't meet with him on that date personally. Whether I talked to him, I don't know.

Q. Do you have any record as you look at this record of any conversation that would have taken place on August 24? By record I'm talking about—

MR. BRINE: You're just asking—

Q. 0006 through—

MR. BRINE: You're asking whether there is a record of an outgoing call to Mr. Fischbein on August 24?

MR. ANGINO: I'm talking about 0006 through 00017, you reference certain things that occurred on the 20th. Do you have

anything in here that occurred on the 24th?

A. With Mr. Fischbein?

Q. Right. Do you have more than one conversation recorded in your notes?

A. No.

Q. And is it your best recollection that in preparing for this story there was only one conversation with Mr. Fischbein that you recorded?

A. Correct.

Q. And that record is as you have told us here; is that right?

A. Correct. As far as I know this is, all of this reflects the conversations that I had with him.

Q. So that if there were a second conversation obviously it speaks for itself you have no record of it; is that right?

MR. BAINE: Objection to the form of the question.

Q. With Mr. Fischbein you have no second conversation recorded?

A. Well, this may have been one conversation, two conversations, you know, I just don't remember, but it's all here, whatever

conversations that I had with him are here.

Q. When you prepare for a story and if you have a conversation do you type that conversation as you speak?

A. You mean as I'm interviewing?

Q. Yes.

A. Yes.

Q. Look at 0007, "He got called probably three days after Tupac was killed", and you continue to go on and are you typing as you are speaking to Mr. Fischbein?

MR. BAINE: I assume you also mean as Mr. Fischbein is speaking to you?

MR. ANGINO: Yes.

A. Yes.

Q. And basically looking at this does this appear to be one conversation starting at seven continuing over to nine?

A. No way for me to know whether it's one conversation.

Q. It talks about different things obviously; is that right?

A. Right.

Q. Where is the part of that conversation with Mr. Fischbein that has to do with Tucker?

A. That would be 00011.

Q. 00011. So none of your conversation with Mr. Fischbein talked about Tucker?

MR. BAINE: No. You just said 00011.

A. No, this did, 00011.

Q. I'm sorry, so on 00011 it starts with C. Delores Tucker; is that right?

A. Correct.

Q. And what you have reported here is, "We just got served the other day. I've read the Complaint now, hard for me to really understand what the issue is, but, you know, she claims, her claim is that her sex life was interfered with between her and her husband. I can't wait to hear the testimony that she is going to give on the subject. When was the last time your sex life was interfered with by

lyrics? I can't wait to hear the testimony. So I'm kind of looking forward to that one. That one was the least worrisome"; is that the sum and substance of what you recorded with regard to your conversation with Mr. Fischbein with respect to Mrs. Tucker?

A. Correct.

Q. Did you talk to Donald David about the case of Mrs. Tucker?

A. I don't recall talking to Mr. David about her case.

Q. Do you recall talking to anybody other than me with regard to Mrs. Tucker's case?

A. No.

Q. So basically—

MR. DAVID: I presume you mean other than Mr. Fischbein?

MR. ANGINO: We already went through Mr. Fischbein.

MR. BAINE: I was thinking about the same objection.

Q. Basically there were two people that you spoke to; correct?

A. Correct.

Q. Now of the material supplied to you, which was sent to you sometime before Monday the 18th, was Newsweek 00014; is that right.

MR. BAINE: 0014 is his notes.

MR. ANGINO: I am sorry, 00114.

Q. It appears—

MR. BAINE: Are we going to start examining on this document and the time slips and the conversations that he had with me?

MR. ANGINO: These are the three areas we are going to talk about.

MR. BAINE: It is a good time for a quick break.

(Recess)

Q. What I'd like you to do, Mr. Roberts, is to look at 191, the date being August 20 and as we said before your conversations, there were two, with Mr. Fischbein were approximately 18 and a half to 19 minutes.

MR. BAINE: Objection to the form of that question. Mr.

Fischbein and Mr. David have the same phone number, so I don't think that you can assume that those two conversations were both with Mr. Fischbein.

Q. Do you think on 8/20 that you talked to Mr. Fischbein and Mr. David or just one?

A. I think I talked to Mr. Fischbein. It's possible or I could have talked to Mr. David. I'm less certain about that.

Q. But you are certain that the conversation of 0007 through 00012 was with Fischbein?

A. That would be my notes, I'm sorry, 000—

Q. Seven.

A. Yes.

Q. Through 00012?

A. Yes.

MR. BAINE: Through the top third

of 00012.

Q. So to be perfectly accurate, the bottom fourth of seven?

A. Yes.

Q. All of eight?

A. Yes.

Q. All of nine, all of ten, all of 11 and the top third of 12; is that right?

A. That's correct.

MR. BAINE: Top six lines of 12.

Q. One, two, three, four, complete pages and parts of two other pages?

A. Yes.

Q. And if you talked to Mr. Fischbein in both conversations the most that you would have spent talking to him was about 18 to 19 minutes; is that correct?

MR. KASTENBERG: Objection. Mischaracterizes prior testimony.

MR. DAVID: Objection.

Q. By this telephone record—

MR. BAINE: I think you mean to say the two conversations reflected on 191 on August 20 total 18.4 minutes. We can agree on that.

Q. And your counsel said if you had talked to Donald David in

one of these two conversations then the other conversation could only have been 7.9 minutes or 10.5 minutes; is that correct?

MR. KASTENBERG: On that day?

MR. ANGINO: On that day.

MR. DAVID: On an outgoing basis?

A. On an outgoing basis?

Q. On an outgoing basis.

You did on that same day have two conversations with Richard Angino; did you not?

A. 238-6791? I made two calls there.

Q. One was how long, 2.6 minutes?

A. 2.6 minutes.

Q. And the second was 14.8 minutes?

A. That's correct.

Q. Now both of those would have been with Richard Angino; would they not?

A. I think so, yes.

Q. And if you add those two up you would be totaling 17.4 minutes; is that right?

A. Well, I don't know that I actually talked to you on both of

these conversations. It would appear that I did in the second one certainly, but I'm not certain what happened in the first one there.

Q. Do you have any recollection as to what you spent 2.6 minutes doing if it wasn't talking with me?

A. I'm not suggesting that I wasn't talking to you. I'm saying I don't know. I do see that I made two calls to you that day and I reached your office and I do know that I talked to you that second phone call for sure.

Q. And you don't have a recollection as to what happened with the 2.6 minutes?

A. Maybe I talked to you, maybe I didn't. I'm just not certain.

Q. But you are certain that all that you recorded was what appears on six, which is one, two, three, four, five, six, seven, eight, nine lines, ten lines? I'm sorry.

A. On which one?

Q. Page 6, it starts with, "When you file a Complaint"; do you see that?

MR. BAINE: Are you asking him to identify the notes of this

conversation with you?

MR. ANGINO: Yes.

MR. BAINE: You haven't asked that yet, maybe you should ask him that.

Q. If you look at six, are these your notes of your conversation with Richard C. Angino?

A. Yes, it would appear on 0006—

Q. And they start—

MR. BAINE: He's in the middle of an answer.

A.—through the first half of approximately 0007.

Q. It starts with, "When you file a Complaint"; is that right?

A. Correct.

Q. Following me through, "When you file a Complaint", is one line; is that right?

MR. BAINE: No, that's not a whole line.

Q. I'm saying that particular line is a line. I'm going down on

the left. "When you file a Complaint", goes through one line. The next line is on—which is two, the next line.

MR. BAINE: Are you asking him to count the lines? Why don't we do that?

MR. ANGINO: You want him to include your line with name and phone number?

MR. BAINE: No, because it's—

MR. ANGINO: It's not obviously a—

A. Ten.

Q. Count the others on the other page.

A. Ten.

Q. So ten on the one page and how many on the other ten?

MR. BAINE: Ten.

Q. 20 lines; is that correct?

A. That's correct.

Q. Those 20 lines are what you recorded with respect to 17 minutes; is that right?

MR. BAINE: Objection. You're glancing back at the phone

records and you are adding two conversations together.

Q. Two point six.

MR. BAINE: When the witness said he doesn't know if he talked to you in the 2.6 conversation—

Q. Let's take 20 lines, even if you talked for 15 minutes, which is 14.8 minutes which you recorded, was 20 lines; is that correct?

MR. BAINE: He said that several times now, he recorded 20 lines.

Q. As you sit here do you remember that conversation?

A. Yes.

Q. Do you know the first topic that was discussed in that conversation?

A. I vaguely recall it was the sort of process, here's when I got involved and here's what happens when you file a lawsuit, here's the process. I vaguely recall that.

Q. Let's not be so vague. Was not the first topic of the conver-

sation a discussion of the constitutionality?

MR. BAINE: Are you testifying?

MR. ANGINO: No, I'm asking a question.

MR. DAVID: I object to the form.

Q. Was not the first subject of the conversation the constitutionality and the protection of the First Amendment with respect to what Tupac Shakur had done? Was that not the first topic of the conversation?

A. Not that I remember.

Q. Did you not reference the Falwell case as being a basis upon which Tupac Shakur could do what he did? Did you not do that?

A. Certainly not.

Q. Did you not discuss with me the Falwell case?

A. Certainly not.

Q. Did I not point out the differences between the Falwell case and what Tupac Shakur had done?

A. Not to me.

Q. Did we not, after going through the Falwell case and the

constitutionality of what the Supreme Court did in Falwell, talk about whether that is or is not represented or similar to what happened with Tupac?

A. That wasn't a conversation I had with you.

Q. You didn't have that conversation with me?

A. Not at all.

Q. All right. You're saying that the first part of the discussion did not involve constitutionality and whether or not Tupac was protected in what he did?

A. I'm saying I did not have a conversation with you about the constitutionality of what Tupac did or what Falwell did or any of that.

Q. So basically you are under oath here and it's not that you don't remember that conversation, you're saying it never took place?

A. I don't recall that having taken place.

Q. You don't recall or did it take place?

MR. BAINE: It's the witness—you've asked a series of questions.

Q. Did a conversation discussing the constitutionality of what Tupac Shakur said in his records constitute actually a number of minutes and the first number of minutes of your conversation with me?

A. I do not recall having any conversation with you about the constitutionality in this case involving Tupac.

Q. Do you recall that there was some weeks later a radio station in Chicago where you were?

A. I recall appearing on a radio program, yes.

Q. And wasn't the discussion on that radio program the constitutionality of what Tupac Shakur's records and the words were whether they were protected or not protected by the Constitution? Was that not the subject of that radio broadcast?

MR. BAINE: The entire subject?

Q. The subject that you were involved in?

A. I did not discuss the constitutionality of anything relating to Tupac in that radio.

Q. Were you in Chicago with respect to that radio broadcast?

A. I was in, I was here in New York.

Q. So they were recorded you by way of a telephone call?

A. I participated by way of telephone.

Q. You participated by way of a telephone call. Do you remember who else was on the line with regard to the constitutionality of this recording?

A. I don't remember the constitutionality subject, but the other participants—

Q. Who were the other participants?

A. You were one of them.

Q. And who was the other one?

A. There was a professor of some sort, I don't remember his name or what university or college he was associated with.

Q. And was not the subject the constitutionality of the lyrics?

MR. BAINE: Was that the subject of—

Q. Of what the person who was consulted and me, was there not an exchange of views with regard to the constitutionality?

A. I don't remember. You may have, the professor may have, the moderator may have, I don't remember. I didn't.

Q. When it came to you after there was this discussion back and forth dealing with constitutionality, what were your words?

A. I vaguely recall that I said something like, "I'm not a constitutional expert", at some point.

MR. BAINE: Let him finish.

A. I vaguely recall that, "I'm not a legal expert or a lawyer", and that I could not comment on the merits of, I think specifically, Ms. Tucker's case.

Q. Dealing with the lyrics from Tupac Shakur?

A. It deals with, her case deals with much more than the lyrics

of his case.

Q. But wasn't the discussion as to whether or not the lyrics from Tupac Shakur's disk were protected by the Constitution?

MR. DAVID: Object to the form.

A. Again, I don't remember that being the subject of this radio review, report. I did not discuss that.

Q. Have you or your attorney attempted to get a copy of the transcript of that radio review?

MR. BAINE: Don't ask him whether your attorneys tried to do that.

MR. ANGINO: Have you tried to?

MR. BAINE: Ask him. Tell him whether or not you've reviewed a transcript of it.

Q. Have you reviewed any radio transcript of what was said?

A. No.

Q. Are you aware whether there was a transcript of what was said?

A I suspect there was, there generally is.

Q. Do you know whether or not a request has been made for that transcript?

MR. BAINE: Don't ask whether or not you know your lawyers have done anything like that. We can deal with that on another level. Have you made—

A. Did I do it? No.

Q. Are you aware of any requests?

A. I'm not—all I can say is I didn't make a request for that.

Q. But you are testifying that that was not the initial subject of the discussion between you and me on August 20, 1997; is that right?

A. I'm specifically saying I don't remember you and I discussing this in that conversation or for that matter any conversation.

Q. Do you recall what was the second area that may have been discussed?

MR. BAINE: Object to the form of the question. There's something that may have been discussed is awfully vague.

Q. You don't remember a discussion of the Constitution and Falwell and whether or not the Supreme Court's decision in that case has anything to do with that, you don't remember any of that?

A. No.

Q. Tell me what your clearest recollection is of the first subject that you and I talked about?

A. Well again, I think it was your involvement in this case.

Q. What did you say, let me back up, start as best you can with your recollection and you may look at these notes to refresh your recollection. The call at 3:45. What happened?

MR. BAINE: Objection. He has told you that he doesn't know that he spoke to you during the call at 3:42. He said that several times.

Q. Let me perhaps help you to refresh your recollection.

MR. BAINE: You can do that.

Q. Did we not talk for a period of time and did you not after that conversation say, "I will call you back"?

A. Mr. Angino, it may have occurred that way. It may have been that you and I did make contact and for whatever reason it was not an extended conversation. It may have been that I was put on hold for a minute waiting. That first conversation I just don't remember.

MR. BAINE: Let me insert an objection here, Mr. Angino, because this is the kind of difficulty we get in when the witness is asking the questions. You have provided to us memorandum of your conversation and we've just, I think, given an incomplete description that in context here is misleading. And so I'm going to suggest to you that what you just suggested might have happened, could not have happened the way you are suggesting it could have happened because what you have suggested to me in the past is that the conver-

sation, had Mr. Roberts said, "Let me call you back on my nickel", implying that it's your phone call to him in this case it would not show up on these records.

MR. ANGINO: That is what I was going to say.

Q. Was there not even a conversation that preceded the two that you have recorded here?

A. Made by me?

Q. Yes. Where you said about calling me back on your nickel. Do you use the term such as that, "Let me call you back"?

A. Yes, yes.

Q. "On my nickel", is that an expression?

A. I use that. I use that term.

Q. So that there are two conversations here that were on your nickel; is that right?

A. Correct.

Q. Do I know you or did I know you on August 20 or any time after that that I would know that you use terminology like calling

somebody on your nickel?

A. I don't think you would have known that.

Q. Do you think I would have had to talk to you on my nickel to know that that's what you said to me?

MR. BAINE: Object to the form of the question. Now you're just kind of making an argument and that's not a meaningful question.

Q. All right. It is a term you use; right?

A. Correct.

Q. It appears on your nickel there were two calls to my office; is that right?

A. Correct.

Q. If you called two times on your nickel then those were calls that have been recorded at 2.6 and 14.8 minutes?

A. I called your office twice.

Q. With regard to either or both or in combination of those

calls, tell me what you remember was the first thing that was said.

A. Well, I would have introduced myself, I would have told you I'm working on this story and I would have told you—

Q. You know what you're doing, "I would have", I'm asking you to remember.

A. Well, I'm sure I did that.

Q. Are you sure you introduced yourself; okay, go ahead?

A. And I'm sure I informed you why I was calling.

Q. What did you say?

A. Probably said—well, I can't tell you verbatim, but in general I informed you that I was working on a story and that it involved your client in connection with her legal matters concerning Tupac.

Q. Was it legal matters or did you specifically say the fact that she couldn't have sex?

A. It was probably—

MR. BAINE: When he first started the conversation with you?

Q. After you had introduced yourself did you talk first of all

about the subject that you were going to talk to me about which was the lawsuit?

MR. DAVID: Object to the form.

Can I have a running object to the form of all of these?

A. Your question is please?

Q. Did you say that you were writing a story about lawsuits dealing with Tupac Shakur's estate?

A. Yes.

Q. Or did you just say you wanted to talk to me about the lawsuit involving C. Delores Tucker and the Tupac Shakur estate?

A. To the best of my recollection I said that, "I'm writing a story about lawsuits, one of which was your client's."

Q. So you are not, you don't recall describing it as the lawsuit singular?

MR. BAINE: Objection. He just said that he said both, that he just testified that he told you he was calling.

MR. ANGINO: You're getting into a narrative.

MR. BAINE: You're mischaracterizing what he just said.

MR. ANGINO: Okay, that's enough to say.

MR. BAINE: You can read it back if you want.

A. What is your question?

Q. You said you were writing about lawsuits?

A. To the best of my recollection I said I was writing about lawsuits, one of which was involving your client.

Q. What was your next question or next comment?

A. It must have been a question just reviewing the notes here that—

Q. Can you do it without reviewing the notes?

MR. DAVID: Objection. You said before, "Make reference to the notes."

Q. You may use it to refresh your recollection.

A. That's what I'm doing.

(3)

Supreme Court, U.S.
FILED

001714 MAY 15 2001

OFFICE OF THE CLERK

Volume II: 299a-590a

In the Supreme Court of the United States

May Term 2001

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Petitioners

vs.

RICHARD FISCHBEIN; TIME, INC.; BELINDA LUSCOMBE; NEWSWEEK MAGAZINE, and JOHNNIE ROBERTS,

Respondents

APPENDIX

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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29-1 SP

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MR. BAINE: Now you're—

Q. Go ahead. Do you remember without looking at the notes, do you remember?

A. The specific question?

Q. Yes.

MR. BAINE: You know you're doing this in a very artificial way, Rich, and you're not allowing him his recollection of the conversation.

MR. ANGINO: I'm asking for a conversation. This is so critical to your case, what the person remembers is important along with what is said here.

Q. Was that the first thing that you talked about after the discussion as to constitutionality, the second—

A. I never talked.

MR. DAVID: Objection.

A. I never talked about constitutionality.

Q. I'll withdraw that.

Did you not bring up the sexual angle to the lawsuit involving Tucker?

MR. BAINE: Objection to the form of the question.

A. At some point in our conversation I brought up the question of sex in the lawsuit at some point.

Q. Did I ask you if you had a copy of the Complaint in front of you? Did I ask you that specific question?

A. Yes, I think I did.

Q. Did I ask you to get it out?

A. Maybe. I don't remember.

Q. Did you have the Complaint in front of you?

A. Yes, I had the Complaint there.

Q. Did I tell you to look at how many paragraphs there were in the Complaint?

A. I don't know if it was that specific question.

Q. Do you recall my asking you how many paragraphs there were in the Complaint?

A. I don't remember that as a specific question. What I remember you doing is saying that there was more than the paragraph dealing with sex in the story.

Q. Did I tell you, "You have the Complaint in front of you and

there are 66 paragraphs"; did I not say that?

A. I don't remember that you said that there were 66 paragraphs.

Q. Did I say that the only paragraph that could be misinterpreted to involve sex was Paragraph 50; did I not say that?

A. I don't remember you saying that the only one could be and the operative word is "misinterpreted". I don't remember you saying that, no.

Q. Did I tell you, "Look at Paragraph 50", did I tell you, "Look at Paragraph 50"?

A. Perhaps you did.

Q. Did I ask you to read the words on Paragraph 50?

A. Maybe you did, I don't remember.

Q. Did I tell you to look at the three preceding paragraphs, 47, 48 and 49?

A. Maybe you did. I don't remember you asking me that though.

Q. Did I point out that Delores Tucker explains what her claims

are in paragraphs 47, 48 and 49?

A. I don't remember, maybe you did, but I don't remember you specifically pointing that out.

Q. Did I tell you with regard to Paragraph 50 that—

A. Let me—

Q. Did I tell you to look specifically at Paragraph 50?

A. Maybe you did.

Q. Did I read it to you over the phone, "Plaintiff's husband, William Tucker, has, as a result of his wife's injuries, suffered the loss of advice, companionship and consortium"?

A. I don't remember you reading it to me, no.

Q. Did I give you a definition of "consortium"?

A. We talked about that paragraph, yes. We talked about that paragraph. Did you give me a precise definition? You described what you thought that paragraph meant, that specific word I don't remem-

ber you defining it for me.

Q. Did I tell you that the media was misrepresenting, blowing out of proportion Paragraph 50?

A. That the media was blowing out of proportion?

Q. Paragraph 50.

MR. BAINE: You're not asking whether you used those exact words, but conveyed that idea to him?

MR. ANGINO: Yes.

Q. Misrepresentation?

A. No, I don't remember that word coming from you in that conversation. I don't remember that word, using that word, no.

Q. Eliminate the word "misrepresentation". Do you remember my saying that, "The media is blowing out of proportion Paragraph 50"?

A. I don't remember those words, that the media was blowing it out of proportion.

Q. Did I make it clear to you that this case had nothing to do with sex?

A. No.

Q. Did I make it clear to you that there's something called a marital union consistent of a husband and wife?

MR. BAINE: Objection to the form of the question, because that's not real clear.

A. I don't know.

Q. Look, what you have here, there is one count that you've marked down here, there is one count of loss, you call it companionship, when I have used the word "consortium"?

A. No.

Q. I used companionship, I said, "I'm a lawyer", I said, "There is one count of loss of companionship"?

A Yes.

Q. So you're saying I told you there's one count of loss of companionship?

A. That's what I'm saying, yes.

Q. It's ignoring the other counts; is that what I said?

A. Yes.

Q. We are talking about all of this affecting Tucker singular; is that right?

A. Yes.

Q. If someone affects you physically, mentally, they've affected the family union; is that right?

A. Correct.

Q. "In most litigation there is—", now you've left out, did I not say, "In most litigation there is a count for loss of consortium", is that not what is there, you've left it out, "In most litigation"?

MR. BAINE: If you're going to keep doing this you're never going to get an answer.

Q. Does it say, "In most litigation there is", and then three dots?

A. You may have well used the word "consortium".

Q. In most litigation there is a count for loss of consortium. Would you accept that that's what I said?

A. What I'm saying is that you may in fact have used that word, I don't remember.

Q. Did I describe that most automobile accidents have such counts and many other suits have that count?

A. You may have.

Q. And I went through a discussion about the fact that every such lawsuit has such an account?

A. No, I don't think it was that sweeping.

Q. You wrote "most litigation", that's what you recorded; right?

A. Yes.

Q. And I discussed the elements that could be included; is that right?.

A. Yes.

Q. It went on to say, "There's somewhere it can include sex"; is that right?

A. I have, "It can include sex."

Q. But I told you this one did not; did I not?

A. No, you didn't.

Q. I went on to say, "It's probably one of the less", and I would have least, you have less significant. Did I say, "One of the least

significant"?

MR. BAINE: Object to the form of the question. You just testified in the middle of that one.

MR. DAVID: He's testifying in all of his questions.

A I have it recorded as less.

Q. And you'll stand by that being my word?

A. Yes.

Q. And companionship as being my word?

A. Yes.

Q. "It's probably the less significant aspect in relations", is that what you have recorded here?

A. Yes.

Q. Was it not actually told to you that that is one of the least significant parts of the word "consortium"?

A. No.

MR. BAINE: Is there a difference between least significant and the less significant?

MR. ANGINO: Whatever.

Q. Now when you have space there, what does that mean?

MR. BAINE: You mean space before the next line, "11 days of depositions"?

MR. ANGINO: Right.

Q. It seems like it's going from one thing to a totally different subject. Is that—

A. What it seems to reflect here, or I'm typing so I may have hit the return bar.

Q. How did your conversation with me happen to go from sex to 11 days of deposition?

A. I think you started to talk about what Mrs. Tucker had endured in all of this litigation, not over some period of time.

Q. Did I not call your attention to the other parts of the Complaint which described what she went through?

A. You sure did.

Q. Did I say, "Look at the Complaint", and I'm specifically

referring to what you had in front of you, what you have in front of you, a factual description of what happened to Mrs. Tucker; is that not correct?

MR. BAINE: What's the question?

Q. You've got a Complaint; right?

A. Yes.

Q. You were reporting about a lawsuit; is that right?

A. Correct.

Q. And that lawsuit starts out by describing the parties; does it not?

A. Yes.

Q. Starting at Line 23.

MR. BAINE: Paragraph 23.

Q. Paragraph 23, there is a description of, "Plaintiff, C. Delores Tucker, leader of a group of religious and law abiding citizens in which she did campaign—", is that lobby, "—campaigned, marched"; is that what it says?

A. Marched, lobbied and campaigned, yes.

Q. Then it goes on to talk about what gangsta rap is; is that right?

MR. BAINE: I object to the form of these questions. The documents speaks for itself. If you want the witness to review it, he can do that.

Q. Is that right?

A. What?

Q. Is that what the next paragraph says?

MR. BAINE: Object to the form of the question.

Q. It talks about what gangsta rap is?

A. Talks about gangsta rap.

Q. Does it talk about Leiberman and Powell and Doe?

A. Where?

MR. BAINE: Does the Complaint talk about those individuals?

MR. ANGINO: Paragraph 17.

MR. BAINE: Seventeen?

MR. ANGINO: 27, I'm sorry.

A. Those persons are mentioned here.

Q. Do you recall as part of our conversation that I mentioned those names?

A. I remember you asserting that prominent persons would—

Q. Be witnesses in this case?

A. Yes.

Q. Including Tipper Gore?

A. I specifically remember Tipper Gore and probably Bennett who had been an ally of hers in this whole campaign.

Q. Did you indicate in the inflection of your voice doubt that these witnesses would be witnesses in this case?

MR. DAVID: Object to the form.

A. No, I did not.

Q. Did you question whether these people would, in fact, be witnesses?

A. I did in fact ask whether Ms. Tucker or you had in fact enlisted Ms. Gore. I didn't ask that with respect to Mr. Bennett because Mr. Bennett had been previously allied with Mrs. Tucker. I had no idea that Mrs. Gore had, so I inquired as to whether you had actually engaged her.

Q. Was your wording, "Do you really expect that Tipper Gore

will testify", were those your words?

A. No. I don't remember those being my words.

Q. Did we discuss Paragraph 38, the lawsuit in California?

A. I don't know that we specifically discussed 38. We discussed all manner of litigation involving Mrs. Tucker in this whole campaign.

Q. Did I tell you, "You're focusing on sex, but look at the Complaint. They brought this lawsuit, they brought these two lawsuits in California"? Did I not tell you they brought those lawsuits in California?

MR. BAINE: Objection to the form of the question. You said a lot of things in that question then you summed it up by only talking about some part of it.

Q. Was part of your discussion with me the subject of Paragraph 38, the California lawsuits?

A. We talked about—

Q. The California lawsuits?

A. We talked about litigation. Quite frankly I don't remember where all of the litigation had been filed, whether it was California, but we talked about litigation concerning these various—the music industry and Mrs. Tucker with respect to gangsta rap.

Q. Did we discuss that in those California actions they put her through 11 days of deposition?

A. Correct.

Q. Did I tell you when you're focusing on sex, "Why don't you look at the Complaint and see what she's been through?"

MR. BAINE: Objection to the form of the question. Again, are you asking whether you used those words.

MR. ANGINO: Along those lines.

A. I don't know the specific words.

MR. BAINE: I object to the form of the question.

You can answer.

A. I don't know the specific words that you used. You did make

it clear that there were other things in the lawsuit that I should look at.

Q. That were important, is that right?

MR. BAINE: You know, you're cutting him off.

A. That were involved in the lawsuit.

Q. Did I tell you, "You should look at the fact that she feared for her life", did I tell you that?

A. I think so.

Q. Did I tell you that, "She had been ridiculed in front of her own people, you should look at that"?

A. I don't know about those specific words, but generally you talked about what she had endured.

Q. I go on to tell you the fact that she'd actually had to have medical care and attention?

A. I don't remember that. I had read the lawsuit so I was aware that it was certainly in the lawsuit.

Q. In fact in the lawsuit Paragraph 47 says she's incurred

medical expenses; is that right?

A. Yes, hold on, let me take a look. What paragraph?

Q. Forty-seven.

A. Yes.

Q. "Undergone mental pain, suffering and inconvenience"?

A. That's all here.

Q. "Loss of life's pleasures, fears for her life, lost her personal freedom to travel freely where and when she desires", did I say all of that was in there?

A. I don't remember you saying that all was in there. I remember you saying there were all of these other things in the lawsuit and I read the lawsuit and if those were the things you meant I was aware that they were here.

Q. You read the Complaint, you knew what was there; is that right?

MR. WILLIAMS: There's two questions.

Q. You read the lawsuit; is that right, the Complaint, you read

the Complaint?

A. Yes.

Q. So you knew what the Complaint said, all right?

A. I read the lawsuit, yes.

Q. Did you see the word "sex" anywhere in that Complaint?

A. No. I don't think it's in there.

Q. Did you see anything in that Complaint saying that Mr. or Mrs. Tucker could not have sex?

A. I saw something in there that I interpreted meant that, yes.

Q. You interpreted it, but did you see any words that said that Mr. or Mrs. or together they were unable to have sex?

MR. BAINE: Objection to the form of the question. He's answered that very clearly. He said the word "sex" did not appear, but he did see language that he understood to mean that.

That's what he said.

Q. Did you use the words "interpreted language", is that what you used?

MR. BAINE: The record will speak for itself.

MR. ANGINO: I want to go back and see if he used the word "interpreted".

(Record read)

Q. So that despite our conversation, you focused on a word or words that you interpreted as meaning sex?

MR. BAINE: Objection to the form of the question.

MR. DAVID: Objection.

MR. BAINE: That is a mischaracterization of the witness' account of your conversation with him.

It's an unfair question.

Q. You have 20 lines of our conversation, is that right here?

A. I think I remember counting 10 on one page and 10 on the other.

Q. With regard to the discussion of the California lawsuits you've recorded, "11 days of depositions and national investigative firm", did I tell you they hired this national investigative firm, went

through her whole history? Did I tell you all of that?

A. I don't know how much elaboration you provided, but you did indicate that they'd hired somebody to look into, investigate her.

Q. And looked at her background, did I not say that?

A. You may or may not have said that. I don't remember.

Q. You were the one that chose what to write and what not to write; is that right?

A. Yes.

Q. And you have, "11 days of deposition, a national investigative firm", what do you mean by "gangsta background"?

A. That there were assertions that some of the people on the other side associated with Death Row who had questionable backgrounds.

Q. Did I not even go into talking about Shug Knight and Kenner?

A. You may have well talked about Shug Knight and Mr. Kenner.

Q. Did I not say she feared for her life because of their

background?

A. You indicated she feared for her life.

Q. Did I not tell you that that was one of the reasons for the lawsuit?

A. Yes.

Q. "These are the kind of units on the other side", do you think I use, "These are the kind of units", are you quoting me?

A. Units look like it may be a typo of some sort.

Q. Typo for what?

A. What the word is?

Q. Yes.

A. I don't know.

Q. What does it mean?

A. I think you were indicating these are the kind of people you were dealing with on the other side.

Q. Why she should be fearful for her life?

A. Yes.

Q. What does the word "music" mean?

A. I don't even known what music is.

Q. Did we not discuss that the music advocates violence, gangsta rap music advocates violence?

A. I remember you talking about gangsta rap music being violent music.

Q. And it's against women and they call them ho's, did we not discuss those things?

A. Yes.

Q. "How would you like if somebody called your wife a ho?"

A. I don't remember that.

Q. You don't remember that?

A. I don't remember that.

Q. "How would you feel if you were Mr. Tucker and this is what she was called by Tupac", was there any discussion about any of that?

A. Again, I can answer that only in a general way. You talked about in general the strains, the stresses, everything that you were alleging your clients had gone through as a result of this whole gangsta rap campaign.

Q. You say you don't recall it.

What is the next line?

A. I don't recall what I said, I didn't recall what.

Q. Saying, "This is your wife", what is your next line?

A. Where?

Q. "Called Mrs. Tucker", and you have a MF. And this is your wife?

A. I don't know that you were referring to my wife. I thought you were referring to that here's this guy and this has been said about his wife.

Q. And I said, "What if that was your wife", and this is your wife, that is what—

MR. BAINE: Wait a second. There's no question pending and, Richard, you're just testifying and you're not even asking questions anymore.

Q. Did you record, "And this is your wife"?

A. Yes, right here.

Q. What was the basis for recording, "And this is your wife"?

MR. BAINE: Other than the fact that you said it? I'm confused by that.

Q. What was it in the conversation that got you to write down, "And this is your wife", tell me what you remember.

MR. BAINE: Objection. That's a hard question to understand.

You can answer if you want to.

Q. I'm just asking what do you remember from, "Call Ms. Tucker" and "MF" and, "This is your wife", do you agree that that is probably—do you agree that's true you wrote "Called Mrs. Tucker" a, not and, do you agree?

A. Called Mrs. Tucker and MF.

Q. Do you say it's A or and?

MR. BAINE: Objection. An MF. You wouldn't say a MF, you'd say an MF.

MR. ANGINO: I thought you use an when the next word is a vowel.

MR. BAINE: When you called—would you say a MF? I think you would say an MF; wouldn't you?

MR. ANGINO: Not in my study of English.

MR. BAINE: Say it out loud. Say the whole thing.

MR. ANGINO: He called someone a MF.

MR. BAINE: I'm curious. An MF sounds right.

Q. What did that mean?

A. You said to me that she had endured all of this stress and however you want to characterize it that she had gone through a lot and Mr. Tucker, as a result of his wife having gone through all of this, also suffered some kind of consequences.

Q. Some damages or expenses, I'll accept consequences.

MR. DAVID: Objection.

MR. BAINE: I think he's in the middle of an answer.

A. So he called her all of this, he's affected—and how would he feel if this is your wife, meaning Mrs. Tucker, being Mr. Tucker's wife, not someone calling my wife this.

Q. I didn't ask you, are you saying I did not ask you to consider it being your wife?

A. You didn't personalize this to me, no. I don't remember you personalizing this to me in any way, shape or form.

Q. Did I in any way, shape or form say that what happened here affected their sex life? Did I say that?

A. What you said to me on that is that as I have recorded it here.

Q. Where?

A. That first paragraph, "If someone affects you physically, mentally, et cetera, they've affected the family union."

Q. That's what I said?

A. That's not all you said.

Q. Did I say sex?

A. Did you ever use the word "sex"?

Q. Did I ever use the word "sex"?

A Yes.

Q. What did I say?

A. You said it can include sex.

Q. The words, "Can include sex"?

MR. DAVID: Now you're arguing with the witness.

MR. BAINE: That's not a question.

Q. Did I tell you, "The word consortium can include sex"?

A. Yes.

Q. Did I tell you that it included sex in this case?

A. What you said is you didn't say it didn't include sex, you said it can include sex.

Q. Did I say whether it involved sex in this case?

A. Well, based on what you said here, yes.

Q. Did I say that Mr. Tucker was not able to have sex?

A. Did you specifically say that he was unable to have sex?

MR. BAINE: In those words?

MR. ANGINO: Those words.

A. I don't remember you saying that specifically, no.

Q. Did I say Mrs. Tucker was not able to have sex?

A. I don't remember you saying that, no.

Q. Did I tell you that their sexual life had changed?

MR. BAINE: Again you're asking whether you used these exact words?

MR. ANGINO: Yes.

Q. Did I say that their sexual—

A. You didn't use those specific words.

Q. Did I say that their sexual life has diminished?

A. Those specific words, no.

Q. Did the word "sex" with regard specifically to Mr. and Mrs. Tucker ever come out of my mouth?

A. In the context, yes.

Q. Were the words, "Not that sex is not involved in this case"?

A. No way, no way.

Q. What did the words, "That's what's called a defense tactic",

mean as you look at it?

A. I told you that I had had my conversation, I'd previously interviewed Mr. Fischbein and that he had indicated that one of the counts in there—

MR. ANGINO: This is the crux of the case.

Q. Go ahead.

MR. BAINE: Then let him finish the answer.

Q. Finish the answer.

A That one of the counts involved sex.

Q. Did I say, "That's what is called a defense tactic"?

A. You said that is called, it is a defense tactic to pull out of a broad lawsuit one thing and focus on that one thing. That that is a defense tactic, yes, you said that.

Q. Did I not use the words, "That is Fischbein's spin"?

A. I don't remember, but maybe you did.

Q. That it was improper?

MR. BAINE: Are you asking whether you used the word..

Q. Whether I used the word "improper". Did I not tell you that that's called a defense tactic?

A. That's what I recorded, yes.

Q. And what does that mean to you, that it was true?

MR. BAINE: What was true?

Q. That this suit involved sex, that's what Fischbein said to you; is that right?

A. He just explained to you what the defense tactic was, you can read it back if you want.

Q. What is the defense tactic?

A. Well, you said that for the lawyer to single out one single element of a broad suit and focus on that to the exclusion of the rest is called a defense tactic.

Q Right?

A. That's correct. That's what you said to me.

Q. Are we talking about a word?

MR. BAINE: Objection to the form. It's an incomprehensible question.

Q. Are we talking about a word?

MR. BAINE: I don't understand the question and I'm entitled to understand the question.

Q. Do you understand what the word "consortium" means?

A. Do I understand it?

Q. Yes.

A. Yes.

Q. Somewhere we should have here Black's Law Dictionary. Can you remember now whether we discussed definitions from the dictionary?

A. No.

Q. In the conversation that you had with Mr. Roberts now, you're asking whether he remembers you discussed dictionary definitions of consortium?

A. No, no. I don't remember that we discussed dictionary definitions.

Q. Did you look at Black's definition of consortium?

A. Did I?

Q. Yes.

A. No.

Q. So that in preparing—

MR. DAVID: Can I have the question and answer read back?

MR. ANGINO: He did not look at Black's definition.

MR. DAVID: Thank you.

Q. So whatever Black said—

A. Hold on one second. Did I look at it when?

Q. When you were preparing this story.

A. When I was preparing the story, no.

Q. Did you know what the word "consortium" meant?

A. Yes.

Q. What did you know it to mean?

A. A relationship is between couples, that covered a broad range of interactions between those couples from the inane to the

most intimate.

MR. DAVID: I'm sorry?

A. Meaning sexual relations.

Q. As an example you knew from the days when you were covering the court beat up until the time when you wrote this particular story that the word "consortium" could include a variety of different things; is that right?

MR. BAINE: Objection to the form of the question.

Q. Is that correct?

A. That it covered a gamut of relationships between a couple, between two members of a couple.

Q. You understood that; right?

A. Yes.

Q. For instance, are you married?

A. No.

Q. Let's assume that there is a husband and wife and the wife is injured in an automobile accident and she's unable to cook for her husband, would you consider that that might be one of the elements

of a loss of consortium count?

A. Specifically the cooking?

Q. Ability to cook for the husband.

A. If she had lost that in an accident?

Q. Yes.

A. Yes.

Q. Let's say she's unable to clean, would you consider that another possible part of consortium?

A. Yes.

Q. Are these some of the inane things that you're referring to?

A. Well, they would be to me, I mean I wouldn't—

Q. But you understand those could be parts of the loss of consortium; right?

A. Yes.

Q. You understand that a part of a relationship between husband and wife is companionship; is that right?

A. Yes. You mentioned it in here.

Q. Sure. So that if someone is unable to have the companion-

ship of a spouse would you think that could be part of a relationship?

A. Specifically that they lost companionship?

Q. Do you think the word "consortium" includes companionship?

A. Would it include, the operative word being "include"?

Q. Yes.

A. Yes.

Q. Society. Do you think that's also included in the word "consortium"?

MR. BAINE: Society being different from companionship?

MR. ANGINO: Yes.

A. Society? You lost me there.

Q. I'm going to read for the record and then ask you some questions. Black has consortium. "Conjugal fellowship of husband and wife and the right of each to the company, society, cooperation, affection, and aid of the other in every conjugal relation."

Do you see that?

A. Yes.

Q. So would you understand that each of those potentially is part of a consortium count?

A. Yes.

Q. Then it cites a case, you've seen various court documents where certain things are said and then there's a certain cite for that, have you not, in your years?

A. Citations.

Q. You know what they are?

A. Yes.

Q. So that you understand that this case of Roseberry versus Starkovich probably has language like that in it; is that right?

MR. DAVID: Objection.

A. You mean do I know that now looking at that?

Q. I'm saying from what you know about the way lawyers write, this is what they call citations where they reference something for saying something?

A. Yes.

Q. And it goes on to say, "Loss of, quote, consortium, quote,

consists of severing elements encompassing not only material services", what do you think "material services" are?

A. I mean, doing things.

Q. Cooking for somebody, cleaning for somebody, taking out the garbage, mowing the lawn, things like that?

A. Yes.

Q. Painting a house, helping you get your clothes, washing your clothes; are those material things?

A. Some of those would be material things, yes.

Q. So all of that is included in a claim for consortium; is that right?

A. Yes.

Q. And you knew that back in 1997 when you were doing the story; is that right? You know that consortium included all of these things; is that right?

A. Yes.

Q. Then it goes on to say, "Not only material services but such intangibles as society, guidance, companionship", and what are the

very last words?

A. Sexual relations.

Q. So in this whole gamut the very last we see are sexual relations?

MR. DAVID: Objection.

MR. BAINE: Objection.

MR. ANGINO: You're always getting so excited.

Q. Is that what it says?

MR. BAINE: Objection to the form of the question.

Q. Is that what it says?

MR. BAINE: You just read two sentences. You read them correctly.

Q. Then goes on to say, "Damages for loss of consortium are commonly sought in wrongful death action or when a spouse has been seriously injured through negligence of another or by spouse against a third person alleging that he or she has caused the break-up of a marriage."

Did I read it correctly? "Cause of action for consortium occasioned by injury to a marriage partner, is a separate cause of action

belonging to the spouse of the injured married partner and though derivative in the sense of being occasioned by injury to spouse, is a direct injury to the spouse who has lost the consortium"? Did I read that properly?

A. Yes.

Q. So that going back to Socrates all men are mortal, Socrates is a man, Socrates is mortal; is that right?

A. Yes.

Q. Some consortium claims involve a loss of sex. Mr. Tucker brought a consortium claim, it involves a loss of sex; is that logical?

MR. BAINE: Objection to the form of the question.

MR. DAVID: Object to the form of the question.

MR. BAINE: Objection to the form of the question. There's no proper foundation for that question.

Q. Is that a logical conclusion?

MR. DAVID: Object to the form of the question.

A. Repeat the question please.

Q. Some claims for loss of consortium involve sex. Mr. Tucker filed a claim for loss of consortium, Mr. Tucker filed a claim for loss of sex.

MR. BAINE: Same objection to the form of the question. There's no foundation for that question.

MR. DAVID: I'd like to state my objection also if I could. As far as I know there is nothing to predicate that on. Some causes of action for consortium involve loss of sex. Loss of sex is only one of the elements, but there's no predicate in this record anywhere that I know of and I don't think you have a good faith basis for making the statement which is a requirement for a question in Federal Court that only some cases involving loss of consortium involve loss of sex.

Q. I'll say it again, tell me if that's a logical conclusion. Some claims for loss of consortium involve situations whereby one's sex life

has been affected and one is making a claim for the effect upon one's sex life. Do you understand that?

MR. BAINE: What do you mean did he understand that?

Q. Do you understand what I just said?

A. No.

MR. BAINE: I'm going to object. What you just said, there's no foundation for it in the record. Now what you're doing, you, as a witness again are giving this witness your understanding of loss of consortium as of this day.

Q. I'm asking you to take as a hypothetical, okay?

MR. DAVID: That's not the subject of a hypothetical.

Q. Or a premise, let's use the appropriate term, take as a premise.

MR. BAINE: I'm going to object to your asking him to accept that as a premise because it's not a hypothetical question which

involves a hypothetical set of facts. It's your current explanation of the word "consortium" and that's not a matter of hypothesis.

Q. Having objected, accept this premise, assume as a premise that consortium involves various elements including sex, accepting that as a principal premise.

A. That it includes sex.

Q. As one of the elements.

A. Yes.

Q. Mr. Tucker has made a claim for loss of consortium. Conclusion, Mr. Tucker has made a claim for loss of sex. Is that a proper conclusion?

A. In this instance, yes, because—

MR. BAINE: You just have to say yes or no.

A. Okay.

Q. And you were about to say why, why under this circumstance.

A. Well, because I called you and specifically approached this matter with you indicating that certainly that had been the view of

Mr. Fischbein and you said, "Well, there's a lot of other stuff in here too. This is only one of them."

Q. And I said, "That's what is called a defense tactic"?

A. Among other things, that's what you said, but you also said, "Yes, it can include sex."

Q. The word?

A. That's what we were talking about. We were talking about the word. I called you and said, "This is how they're—how he is interpreting this particular—that's how they were interpreting it."

Q. Did I indicate that that was an improper interpretation?

A. No. Not at all.

Q. Next paragraph on seven.

That is the kind of thing that you—do you know what those words meant?

A. Here I think you had gone into a discussion about gangsta rap and that it was not a positive thing, gangsta rap, and that all of

these other people had been involved in the battle against certain lyrics.

Q. Don't you think that you have that misplaced?

A. No.

Q. That's what is called a defense tactic, that is the kind of thing that defense lawyers do?

A. No, I don't recall that that is what I was writing there, no.

Q. You don't. Then tell me how it has any relationship to do with, "Bennett is on her side"?

A. Because you were jumping around in the conversation.

Q. Well, tell me the relationship between, "That is the kind of thing that—", is that a sentence, "That is the kind of thing that"?

A. Right, right. I'm not suggesting that it has any relation to what came prior to it. As I was saying, you were jumping around from different things to different things in the conversation.

Q. Does it have anything to do with what follows?

A. That's what I said, I thought it was the introduction into another subject, that being, another subject being that gangsta rap has all these elements that are negative and that's the kind of thing that Bennett, Gore and others have opposed.

Q. What I want to know is what it means, "That's the kind of thing that."

MR. BAINE: He just said—read the last line the last answer.

(Record read)

Q. So what you're saying is that we were then talking about gangsta rap and, "That is the kind of thing that", refers to gangsta rap, not to, "That is what is called a defense tactic", that's what you are saying?

A. Right.

Q. Where do you see that?

A. Where do I see what?

Q. That we were talking about gangsta rap?

A. Because we bounced back into Bennett and Gore, from Mr.

Bennett and Mrs. Gore, and you were broadening the conversation that she is not alone in all of this, that there are other prominent people who oppose gangsta rap.

Q. Tell me from your recollection, there's reference to calling Ms. Tucker an MF and, "This is your wife", "That's what is called a defense tactic", are you saying the conversation just jumped then over to Bennett?

MR. BAINE: Objection to the form of the question.

Q. Is this what you're saying jumped over to gangsta rap, that's the way I talked?

A. Yes, I am saying that's what happened.

Q. Didn't say, "That's the kind of thing that lawyers do"?

A. Mr. Angino, with respect to your characterization of Mr. Fischbein's conversation with me, all I have recorded is, "That's what is called a defense tactic", that's what you said to me.

Q. That's all you've recorded, but then your next thing is, "That

is the kind of thing"; is that right?

A. Right and I think I've answered what I thought that was.

MR. BAINE: I think the record should reflect that although you've said it's the next thing there is a double space.

MR. DAVID: Can I ask when we are going to take lunch breaks?

MR. ANGINO: It's 20 after one, I'm hoping we'll be done in 10 to 15 minutes. Is that satisfactory?

MR. DAVID: Fine.

MR. BAINE: Off the record.

(Discussion held off the record.)

Q. You've recorded here an intention to call Mrs. Gore; is that right?

A. You discussed calling Mrs. Gore.

Q. What is the next word, "strategy"? "This was a particular situation Mrs. Gore was interested in", what does that mean?

A. That she had been involved in this subject, this whole lyrics

issue in music sometime ago.

Q. The words, "Dionne Warwick"?

A. That Dionne Warwick, this had been a subject that was of interest to her as well.

Q. I see another big space, then what?

A. "Put out a record to defame her, it's all intertwined."

Q. What does that mean?

A. You were asserting that Tupac put out a record to defame Mrs. Tucker and that all of this stuff on the part of the music industry, at least with respect to gangsta rap, was all connected.

Q. With what?

A. What do you mean with what?

Q. Intertwined with what? Something has to be intertwined.

A. To subvert the campaign of the anti-rap people.

Q. So basically the song, the lawsuits, all of these things were attempts to stop Mrs. Tucker; is that right?

MR. BAINE: That's a question?

A. What's the question?

Q. That the lawsuits, the defamatory records, the threats were all ways to stop Mrs. Tucker and her campaign; is that correct?

A. I don't know if they were or not.

Q. Is that what was discussed, how these were all intertwined?

A. That's what you said in the conversation, yes.

Q. That's what I'm saying, that's what I said in the conversation; right?

A. Yes.

Q. How they were all intertwined?

A. Correct.

Q. Did you not understand then that what was the purpose of the lawsuits?

MR. BAINE: Which lawsuits?

MR. ANGINO: The one brought aginst the Tupac Shakur estate.

MR. BAINE: By the Tuckers?

MR. ANGINO: By the Tuckers.

A. Well, to assert that—

MR. BAINE: Object to the form of the question. Are you

asking for his understanding or what you said?

MR. ANGINO: His understanding.

A. No, no because I was anxious.

Q. What I said, your understanding of what I said to you was the purpose of lawsuit to assert that she had been injured and that he had been injured in some way by the Defendants resulting from Mrs. Tucker and her allies pursuing this anti-gangsta rap campaign and that you were trying to recover damages for that. And there was a conversation along that line?

A. Yes, you talked about the lawsuit.

Q. But what you've recorded are those words that make up that one line; is that right?

A. No. You lost me. Which one line?

Q. "Put out a record to defame her, it's all intertwined."

A. Yes.

Q. Then there's another big space, "What I suspect is that major

companies involved here Seagrams and Time Warner, they know they are wrong in supporting. I don't know what will happen"; what does that mean?

A. That either you or Mrs. Tucker believes that Seagrams and Time Warner having economic interest in rap music were pursuing those economic interests even though they knew that supporting rap was wrong and that you didn't know what would happen in the Washington.

Q. I don't know what will happen referring to the lawsuit?

A. That's what I meant, the outcome.

Q. Did you not ask me questions such as what generally happens with regard to such a lawsuit, what's the next step, what will happen when it will come to trial? Were those not a series of questions of yours?

A. I don't know that, I don't recall that I asked you a series of questions, but certainly I wanted your view on what will happen as a result of these lawsuits having been filed.

Q. Did I not say they have to file responses and then there's discovery and the case eventually will come to trial and you said, "When will it come to trial", and I said, "We are in the Eastern District and they move cases along, but I suspect that the case would come to trial in a year or less", was that not the substance of that conversation?

A. We talked about that the Eastern District earlier on in the conversation for sure, so somewhere in the conversation that's what I meant, we are jumping all over the place throughout this conversation, but yes somewhere in the conversation you talked about the sort of procedures, yes, here it is, yes you said it.

Q. And, "Dr. Tucker has a lot of friends who respect her in high positions"?

A. You talked about that, that she had influential people.

Q. And that I suspect that if we asked them they would support her, I would be surprised if the matter isn't up for trial, the case in California has been going on against her for two years. Did we not

talk about Eastern District, we expect cases to move along quickly, was that not the tenor?

A. I vaguely remember you specifically talking about the Eastern District of Pennsylvania.

Q. And although you have, "Up for trial for a year", did I say, "Up for trial in less than a year, not to take any longer"?

MR. BAINE: Objection to the form of the question. You misread that. It says, "I would be surprised if the matter isn't up for trial within the year."

Q. So the interpretation is it would get to trial before the year was up; right?

A. Yes.

Q. So basically is it correct that you took Fischbein's conversation and you took my conversation and you took the Complaint and you wrote an article?

A. No.

MR. BAINE: Objection to the form of the question.

Q. What else did you—

MR. BAINE: I don't want to complicate, there are a lot of other things in the article.

MR. ANGINO: I'll talking about the Tucker part of it.

A. Okay, so your question is?

Q. With regard to what you said about the Tucker portion of the article you took what Fischbein said, you took what I said and you took the Complaint; is that right?

A. Correct, I think it reflects that.

Q. Did you have any other sources?

A. No.

Q. So you weren't relying on Black's dictionary?

A. You mean did I go to Black's dictionary?

Q. Yes.

A. No, I didn't in this instance go to Black's dictionary, but I knew that consortium include sexual relations.

Q. Included or could include?

A. No.

Q. Included or could include?

A. In this instance included because at 50 you specifically say they, "Suffered the loss of advice, companionship and consortium."

Q. So what you're saying is advice, companionship and consortium to you meant sex?

A. I'm sorry?

Q. Meant sex, loss of sex?

MR. WILLIAMS: Objection.

MR. DAVID: Objection.

A. Repeat your question. I'm sorry.

Q. You saw in the Complaint society, companionship and consortium?

A. There's no society here.

Q. Whatever. What is the word?

MR. DAVID: Objection.

MR. BAINE: Advice, companionship and consortium.

Q. And you took the word "consortium" to mean sex?

A Not exclusively, but you had advice, companionship or also included in consortium, but you specifically stated here in separate

clauses that she had lost those, so the broad definition of consortium includes all of these things. You gave them their separate sort of emphasis so that sex would have been included in consortium along with some of those other elements that form consortium.

Q. Did I say advice, companionship and sex?

MR. BAINE: Excuse me, does the Complaint use those words?

MR. ANGINO: Yes.

MR. BAINE: We agree that those, advice, companionship and consortium, right.

Q. And you took the three sources, the Complaint, conversation with Mr. Fischbein and your conversation with me and I assume prepared an article; is that right?

A. I prepared an article, yes.

Q. And does that article show up in various forms in what we call Newsweek 1 through 5?

A. Yes.

MR. BAINE: Objection to the form of the question, when you say "various forms".

MR. ANGINO: It may be one form, I don't know.

MR. BAINE: Okay.

Q. Is this entire article one through five?

A. Yes, it is.

Q. Not being in the publishing field, is this final draft before publication, preliminary draft, intermediate draft? Tell me what this is.

A. This is final draft.

Q. Were there other drafts before this?

A. Were there other drafts before this? A piece was edited.

Q. Can you tell me what it appeared in its initial form and how it went through its different editing?

A. Well, just to the process as I explained earlier, as I wrote the story, turn it in and upwards of three editors would read it and edit

it. They would have questions along the way or they would want clarification along the way.

MR. ANGINO: Do they have a record of the different drafts, an editor copy?

MR. BAINE: Is this the only record that we have.

MR. ANGINO: So you don't have like the earlier drafts that we have for our Complaint?

MR. BAINE: We don't have prior versions of the article.

MR. ANGINO: Are you able to get prior versions?

MR. BAINE: No.

MR. ANGINO: The computer won't let you do that?

MR. BAINE: No.

Q. What we have now is the edited version; is that right?

A. Yes.

Q. And basically the reference to C. Delores Tucker starts on one; does it?

A. On Page 001.

Q. Yes?

A. The first reference to Ms. Tucker is on that page.

Q. The word "even" is there. Do you know what's that next line with the LB; what does that mean?

A. What does what mean, the LB?

Q. What does that mean?

A That's a production function, it aligns and I'm not an expert in this stuff, but it makes, it helps make the line fit into the space allotted for the story.

Q. "Even C. Delores Tucker, the gangsta rap foe wants a chunk. She and her husband claim that a lyrical attack by Tupac iced their sex life." Is "iced" a word you use in your normal vernacular?

A. I mean I've had occasion to use ice.

Q. What does it mean?

A. Damaged, interrupted.

Q. Destroyed?

MR. BAINE: He gave you his definition.

Q. Destroyed?

A. Damaged, interrupted.

Q. She and her husband claim—did she claim?

MR. BAINE: Did she claim what?

Q. That the lyrical attack by Tupac iced their sex life?

A. She claims she was injured.

Q. In what fashion?

A She claims she was injured in a way that affected her husband.

Q. She claimed that she was injured in a way that affected her husband. Tell me how you got that.

A. It's in the lawsuit.

Q. Tell me what it is in the lawsuit that says that.

A. That would be 0122, Paragraph 50.

Q. Is that her claim or is that his claim?

A. I was talking about his wife being injured, his assertion is embedded certainly in Paragraph 50.

Q. What is Paragraph 50?

A. "Plaintiff's husband, William Tucker, has as a result of his wife's injury suffered a loss of advice, companionship and consortium."

Q. And you're saying that her lawsuit can be fairly reported as being one where she and her husband claimed that a lyrical attack by Tupac iced their sex life, is that a fair reporting of that Complaint?

A. That's what the lawsuit alleges.

Q. Is that a fair reporting of the Complaint?

A. Yes.

Q. You then quoted Tupac, quoted Fischbein, "It's like being on a ship and pirates trying to loot it."

MR. DAVID: Objection to the sequences and you then quoted Fischbein.

MR. ANGINO: That's the quote.

MR. DAVID: But there's nothing there saying that those two are directly connected.

MR. ANGINO: No, but one directly follows; does it not?

MR. BAINE: I think we can note an objection to the form of the question and note what you're doing is reading the last two sentences of a full paragraph.

MR. ANGINO: Right.

MR. BAINE: And the sentence quoting Mr. Parlans the sentence that refers to a number of items.

MR. KASTENBERG: You also misread it.

Q. "It's like being on a ship and watching pirates loot it"?

A. That's a quote.

Q. Are you, by the tenor of your article talking about the ship as being the Tupac Shakur estate?

MR. BAINE: Objection to the form of the question. That's Mr. Fischbein's words, not his.

Q. Right, but is the article talking about the various lawsuits

that are all trying to get a part of the Tupac Shakur estate?

A. Is that what the article is about?

Q. Yes.

A. The article is about the number of actions brought against the Tupac estate, yes.

Q. Trying to get part of that; is that right?

A. Trying to collect damages.

Q. And quoting Fischbein, "It's like being on a ship and watching pirates trying to loot it", is that the quote?

A. That's the quote.

Q. So at least from Fischbein's vantage point, the ship would be the estate; is that right?

MR. DAVID: Objection. How could he know what Fischbein thought?

Q. I mean the words, would you say the ship is the estate?

A. No, I wouldn't say that. I would say that I think that's what he—

Q. That's what Fischbein is looking at it as, the estate is the ship

and these lawsuits are the pirates; is that right?

A. Yes.

Q. That's what you quoted, is that right, as being the words of Fischbein; is that right?

A. That's correct.

Q. Where do we next have Tucker mentioned?

MR. DAVID: If I could, we are now way way over your ten-minute estimate, all right. Do we have a new estimate?

MR. ANGINO: Five minutes maybe. We're getting to the end.

Q. 004, what is said there?

A. Beginning the last paragraph on that page?

Q. "Fischbein fairly smirks about the suit by Tucker", what do you mean "smirks"?

A. What I mean there is in the way that he discussed that particular case the tone was lighter than in the discussion of some of

the other cases.

Q. By lighter do you mean he thought less of it?

A. What do you mean by that?

Q. That he thought it was even more ridiculous than the other ones?

MR. BAINE: Objection to the form of the question. It's actually describing the notes is exactly what he said.

Q. Smirks to me normally shows a physical movement. Did you ever talk to Mr. Fischbein face to face?

A. No.

Q. So when you use the word "smirk" you were referring to voice?

A. Yes.

Q. You were taking about whatever voice you were hearing and telling the leadership that Fischbein fairly, what does fairly mean? "Fischbein fairly smirks"?

A. Well, it certainly wasn't that he was laughing. I think in my conversation with him, it was his view that the allegations made here

were less serious than those in the other suits and that was in part conveyed in how his voice was in discussing it.

Q. Now early on you said that they claimed that the lyrics had iced their sex life. At the end then you said, "Among other things", what are those other things?

A. Well, this.

MR. BAINE: You will allow him to read it?

A. You want me to read it?

Q. I want to know what the other things are, yes.

MR. BAINE: It speaks for itself, it is a sentence. You want it read?

Q. "Among other things she asserts that she feared for her life, had been humiliated and can no longer have sex with her husband."

Did she assert that she could no longer have sex with her husband?

A. Again, I go back to Paragraph 50 and I refer back to the conversation that I had with you.

Q. Did I say that she couldn't have any sex with her husband?

A. No.

MR. DAVID: Object to the form of the word "any".

Q. Is that she could no longer have sex?

MR. BAINE: Did he use those words?

A. No, you didn't use those precise words, no.

Q. Where did you get the words, "Can no longer have sex with her husband"?

A. That's one of the definitions of consortium, that it affects sexual relationships.

Q. But the loss of consortium, the loss of the ability to have sex with your partner, forever?

A. No, not necessarily forever.

Q. As often?

MR. BAINE: What was that?

MR. ANGINO: As often.

MR. BAINE: I don't understand that.

Q. If you see the word "consortium", let me just follow what you're saying here. You took the word "consortium" and interpreted that word to mean loss of sex; is that correct?

MR. DAVID: He also had a conversation with you.

A. Not just the word. I had a conversation with you as well.

Q. All I said was that the word can include sex; did I not?

MR. BAINE: Objection to the form of the question.

MR. DAVID: Objection.

Q. Did I not tell you that the word "consortium" can include sex?

MR. BAINE: Objection to the form of the question.

Q. Answer it, please.

A. In the context of the conversation the question that I had with you, what I told you that was said to me by Mr. Fischbein, yes, in fact—

Q. Yes, in fact what?

A. Yes, in fact, I came away from that conversation very much confidently believing that that was your view as well, it meant sex.

Q. That it could include sex?

A. That it meant sex because you didn't say, "No, Johnnie, this does not mean that, that is absolutely the wrong interpretation of that word. That's not what we mean here", you never said that to me.

Q. Did I say it could include sex?

MR. BAINE: Objection to the form. He's described the entire conversation, now you want to ask him about one sentence?

Q. Let's start with that. You came away with the conclusion that the word "consortium" meant loss of sex; right?

A. Well, I knew before the conversation that it could certainly mean the loss of sex and I left the conversation believing certainly the loss of consortium is the loss of the ability to have sex.

Q. At all?

MR. DAVID: Objection. He didn't say at all.

A. I didn't say at all.

Q. Well, did you get something from my conversation that lead you to believe that she could no longer have sex with her husband, that they were no longer having—

A. That their ability to have sex had been interrupted, that something was wrong there.

Q. They could no longer have, it is that your words, "They can no longer have sex"?

A. That's it.

Q. That's what you got from our conversation?

A. Not just your conversation.

Q. What else did you have that told you that they could no longer have sex?

A. I knew that the meaning of the word "consortium" and the loss of consortium meant that or it certainly included the loss of the ability to have sexual relations.

Q. When you quoted me—

A. I knew—

Q. Go ahead.

A. I knew one of the attorneys certainly interpreted the word that way and I knew that when broached with you that you certainly didn't say that, "Oh, no, Johnnie, this is absolutely wrong." You said to me, "That's not the only thing in the lawsuit, there are all of these other things, threats to her and humiliation and so forth. That is a defense tactic to focus only on one thing."

Q. But was there ever anything that said they couldn't have sex?

MR. DAVID: Objection. The witness has answered that question.

Q. Did I ever say they wouldn't?

MR. BAINE: You want to know if you used those—

Q. Yes, did I ever say they could no longer have sex?

MR. BAINE: You can answer it again whether he used those words.

Q. That they could no longer have sex?

A. As indicated here there is no quotation mark, I did not quote you directly as saying that.

Q. Did I say in effect that they could no longer have sex?

A. No.

MR. BAINE: Did you say in fact or in effect?

MR. ANGINO: In effect.

Q. Or words to the effect that they could no longer have sex?

A. In effect. In effect you left me clearly with the understanding that their sex life had been damaged in some way certainly.

Q. Some way.

Did you come away that they could no longer—

MR. WILLIAMS: He's not finished.

A. That they could not for a point in time have sex. Somewhere around the time that this lawsuit was drafted certainly.

Q. So when you quoted Fischbein you quoted, "I can't wait to hear her testimony on that subject", when you quoted me all that

you had was, "Affected the family union"; is that right?

A. That's correct.

MR. ANGINO: Let's go to lunch.

MR. BAINE: You're finished?

MR. ANGINO: Yes.

(Luncheon recess taken)

EXAMINATION BY
MR. DAVID:

Q. All right. Mr. Roberts, since you haven't gotten a chance to tell the story of what actually happened in that conversation without interruption, I'd like you to tell us what occurred in the conversation between you and Mr. Angino as it related to the issue of whether sex was a component of the claim being made by the Plaintiffs. Tell us what you said to him and what he said to you.

A. I called him and we talked about other things, but when it turned to the subject of, the subject of sex was broached by me, when I said to him, "Mr. Angino, Mr. Fischbein certainly was interpreting

that Paragraph 50 to mean that the sex life of Mr. and Mrs. Tucker had been damaged meaning that it had been affected negatively in some way", and he said to me, he being Mr. Angino, that that particular paragraph certainly encompassed sex, that there were other things in that lawsuit, the humiliation and the threats and so forth. In short he seemed to be very interested in broadening what the various allegations were being made in that lawsuit. He seemed to be concerned that the focus prior to, the earlier focus was almost exclusively on sex and that that was a mischaracterization to focus exclusively on sex, but that there were these other things as well.

Q. Did Mr. Angino ever say to you in words or substance in any conversation that you had with him that sex was not a component of the damages being claimed by the Plaintiffs?

A. Never.

Q. Sir, you've been shown certain notes of conversations that you took, do you regularly take notes in the course of your business?

A. Yes.

Q. Is it, in fact, part of your normal business to take such notes?

A. Yes, it is.

Q. Sir, if I could, you were asked about a reference to Black's Law Dictionary. I'd like to give you a copy if I could of the 1951 edition of it, you've been shown the later edition, all right, and I'd ask you to take a look at the word "consortium" and just read that first paragraph. The only reason I'm asking you to read it because I've misplaced my other copies of it, so I'd want everybody to know what you're reading.

A. "Conjugal fellowship of husband and wife and the right of each to the company, cooperation, affection and aid of the other in every conjugal relation."

Q. I apologize I do have copies.

MR. DAVID: I'd like to have that marked as the next exhibit Number 5.

(Roberts Exhibit 5, copy of Black's Law Dictionary page,

marked for identification.)

Q. Mr. Roberts, have you ever heard the term "conjugal relation"s used for exam in the instance of prisoners?

A. Yes.

Q. Do you have an understanding of what the word "conjugal" means to you as a layperson, journalist?

A. There are often referred to as conjugal visits in which case the spouse, significant other of the person incarcerated is allowed to visit privately with the incarcerated and it is widely and generally assumed that during that visit one thing they do is have sexual relations and are provided the privacy in which to have those relations.

MR. DAVID: I'd like to have this marked as Exhibit Number 6.

(Exhibit 6 , page from The American Heritage Dictionary of the English Language, marked for identification.)

Q. I'm going to ask you to take a look at the definition of

consortium, it's approximately four definitions from the bottom on the left-hand side of the page and particularly the third one, which is preceded by an italicized word "law". Can you read that to yourself, sir?

A. To myself?

Q. Yes. Everybody has a copy of it, I don't think we need to read it into the record.

MR. BAINE: Mine is a not legible.

Q. "Law: The right of a spouse to the company of, help of, affection and sexual relations with his or her mate."

Sir, at the time at which you read the term "consortium" in the Complaint did you have an understanding as to what you understood that to mean?

A. Yes, I did, but—

Q. Go ahead, I'm sorry.

A. I wanted to ask a question of—

(Witness and counsel confer)

A. Let me read it myself.

MR. BAINE: Just answer the question.

A. Yes.

Q. Is it fair to say, sir, that your understanding of that term comported with the dictionary definition that we just read?

A. Very much so.

Q. Is it fair to say, sir, that your understanding of that term was that it included multiple elements of which sex was one?

A. Yes.

Q. When you got done with your conversation with Mr. Angino did you have a belief as to whether the Complaint in this case included a claim for loss of sex?

A. Yes.

Q. And what was that belief?

A. What was my belief? That it did.

Q. After you had your conversation with Mr. Angino what was your belief as to that issue? I'm asking for your state of mind if I could.

A Well, that certainly in this instance included it because I had

specifically or he had the opportunity specifically to disabuse me of the notion that it didn't include sex.

Q. And in fact the question of whether sex was a component was a substantial part of your conversation with Mr. Angino?

A. That's correct.

Q. I have no further questions.

MR. WILLIAMS: No questions.

MR. BAINE: I have no questions.

FURTHER EXAMINATION

BY MR. ANGINO:

Q. I just have a couple. Do you understand that amended Complaint that was filed in—

MR. DAVID: Objection. That is not within the scope of the questioning that I—

MR. ANGINO: It doesn't matter. It is a deposition, I mean you are—

MR. BAINE: Let me say, Mr. Angino, that I would say it's not

only not related to his questions, that's after the Newsweek article was published, so it doesn't have any bearing on what Mr. Roberts did.

MR. ANGINO: That's fine.

MR. BAINE: Try to keep it brief because it has nothing to do with these activities.

Q. Do you know that there was an amended Complaint that was filed in the Tupac Shakur case?

A. Yes, I think I'm aware that there was an amended Complaint.

Q. And I suggest to you that there was marked as an exhibit Tupac or Time Warner 12 that amended Complaint.

First of all, this will not take more than a minute or two. You will see that on August 27, 1997—

MR. DAVID: If I could I'm going to have an objection to this entire line of questioning and we'll go from there.

Q. The amended Complaint was served on various Defendants; do you see that?

MR. DAVID: Again, I'm going to object. I believe that this is inconsistent with a document which you, yourself, authored.

Q. You see that?

MR. BAINE: He's looking at a Certificate of Service which there is no reason to believe he's ever seen it before.

Q. That's what I'm saying and you see 8/27/97; is that right?

A. On the following page, yes.

MR. BAINE: And we can agree on the record that the Newsweek article was on the newsstands two days before that?

MR. ANGINO: Absolutely.

Q. And your conversation with me was seven days before this; is that right, can we agree to that?

A. Whenever the date is on the phone records.

Q. And, we can agree that my name appears on this amended Complaint; is that correct?

A. Yes.

Q. Can we agree that Paragraph 45 states, "Defendant co-administrator of the estate of Tupac Shakur has continued to defame and harass Plaintiff by holding her up in a false light even after the Complaint in this matter was filed on June 21, 1997"?

MR. BAINE: That's wrong, but that's what it says.

MR. ANGINO: Does it say July?

MR. BAINE: It says June, you read it correctly.

Q. The next is 46, "Defendant Fischbein made false and misleading statements regarding the claim herein", is that what I said? Are those the words there?

MR. BAINE: It's part of the sentence.

Q. Did I not tell you exactly the same thing? Now we are going back to the—

MR. BAINE: Now you're back to the conversation.

MR. ANGINO: Seven days before this was filed.

MR. BAINE: Your question is?

Q. You and I talked; is that correct?

A. We talked on whatever that date was in the phone records.

Q. Did I in essence tell you that Defendant Fischbein was making false and misleading statements regarding the claim of Plaintiff?

MR. DAVID: Objection to the form.

MR. BAINE: Objection to the form. He's explained to you what you said about Mr. Fischbein's comments.

Q. But if you can answer that question you can go ahead and answer the question.

Did I say that Fischbein was making false and misleading questions regarding the claim?

A. The only thing that I remember you saying with respect to Mr. Fischbein was quoted. These are my notes, I'm reading from

0007, "That's what is called a defense tactic."

MR. ANGINO: No further questions.

MR. BAINE: We are concluded. Thank you.

(Time noted: 2:00 p.m.)

LEGAL AFFAIRS

Grabbing at a Dead Star

Lawsuits plague rapper Tupac Shakur's estate

By Johnnie L. Roberts

Rap star Tupac Shakur's ashes had hardly cooled before the gold rush began. Now, almost a year after his death, his mother is defending the estate from an old lover who turned up to prove he's Tupac's father. An Arkansas court has already awarded $16.6 million to a woman who was shot at a Tupac concert. Until a tentative settlement last week, Tupac's label, Death Row Records, was demanding a $7 million slice, and its imprisoned CEO wanted millions more. Even C. Delores Tucker, the gangsta rap foe, wants a chunk. She and her husband claim that a lyrical attack by Tupac iced their sex life. "It's like being on a ship and watching pirates trying to loot it," says attorney Richard Fischbein, who administers the estate with Tupac's mother, Afeni Shakur.

As Thomas Mann wrote, "A man's dying is more the survivors' affair than his own." Since Tupac was murdered last September, his multimillion-dollar legacy has become the contentious affair of kin, colleagues and alleged opportunists from L.A. to Australia. In his lifetime, Tupac's profane rap lyrics and violent encounters made him controversial, helping to swell by tens of millions of dollars the coffers of Death Row and its corporate benefactors, Interscope Records, Time Warner and Seagram's Universal (formerly MCA).

Yet Tupac was almost broke when he died. Alleging massive fraud and conspiracy, Fischbein and Afeni Shakur sued Death Row, its jailed CEO, "Suge" Knight, and its lawyer, David Kenner. They owed Tupac at least $9.9 million, the suit alleged, and $7.1 million more in expenses charged to his account that he hadn't incurred, including $120,000 for a house Kenner rented. As of last Friday, the estate was close to settling on its terms, according to Fischbein. Even before that, he adds, there was $7 million on hand from royalties and movies. A settlement could ultimately push the estate's value to $50 million, estimates one person close to the matter.

The fortune increases the stakes in the ugly probate battle in Los Angeles between Tupac's parents. Tupac had no will, but there seems little doubt that he would have wanted his mother to inherit. The identity of his biological father had always been in doubt. Although Afeni had once been a confessed drug addict, her son loved and supported her, writing a song about her titled "Dear Mama." But California law requires the estate to be split by the parents if there's no will. Enter William M. Garland, who has established paternity through DNA testing. "Afeni had contended that Tupac's father was dead," says Garland's attorney, Mitchell Reinis. Says Fischbein: "We call it the case of the deadbeat dad. He won't be rewarded for his lack of interest in his son."

The most serious blow to the estate resulted from a 1993 tragedy in Pine Bluff, Ark., in which Jacqualyn McNeasley, 27, was struck by a stray bullet at a Tupac concert. Last November a judge granted damages of $16.6 million when Tupac's representatives failed to show at a hearing. Fischbein says Tupac was never properly notified of the lawsuit and that he himself knew nothing of it until he was phoned by MTV after the judgment. The estate is appealing. "The police report totally said Tupac had nothing to do with it," Fischbein says.

Fischbein fairly smirks about the suit by Tucker, a persistent crusader against gangsta rap. On an album last year, Tupac addressed Tucker as a "mother-f--ker," and he suggested that she was a prostitute—at least that's what she alleges in a lawsuit against the estate, Death Row and others. Among other things, she asserts that she feared for her life, had been humiliated and can no longer have sex with her husband. Says Fischbein: "I can't wait to hear her testimony on that subject." Her attorney, Richard Angino, says the lyrics "affected the family union." On that note, Tupac will rest in peace. ■

Broke when he died: *But the estate could grow to $50 million*

The critic: *Lyrics affected 'family union'*

Death Row boss: *Demanding a slice*

Prodigal dad: *DNA proves paternity*

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FILED SEP 02 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO. 97CV-4717

C. DELORES TUCKER and
WILLIAM TUCKER, her husband,

Plaintiffs

v

MTS, INC. t/a TOWER RECORDS; INTERSCOPE, INC.; INTERSCOPE RECORDS; TED FIELD; TIME WARNER; JAMES IOVINE; SEAGRAM CO.; MCA INC.; DEATH ROW RECORDS, INC.; DAVID KENNER; RICHARD FISCHBEIN as co-administrator and
AFENI SHAKUR as co-administratrix of the
ESTATE OF TUPAC SHAKUR,

Defendants

JUDGE RONALD BUCKWALTER
JURY TRIAL DEMANDED

AMENDED COMPLAINT

1. Plaintiff C. Delores Tucker is the chair of the nonprofit National Congress of Black Women, Inc. She is the former Secretary of State of the Commonwealth of Pennsylvania and Chair of the Democratic National Committee Black Caucus and the National Board of N.A.A.C.P.

2. Plaintiff C. Delores Tucker resides in the Commonwealth of Pennsylvania.

3. Plaintiff William Tucker is married to C. Delores Tucker and resides in the Commonwealth of Pennsylvania.

4. Defendant MTS, Inc., under the trade name of Tower Records, is a California Corporation with its principal place of business in California.

5. Defendant Interscope, Inc. is a California Corporation with its principal place of business in California.

6. Defendant Interscope Records is a California General Partnership with its principal place of business in California.

7. Defendant Ted Field is an owner or partner and/or has a financial interest in Interscope Records and resides in a state other than Pennsylvania.

8. Defendant Time Warner has or had a financial interest in Interscope Records, and its principal place of business is in a state other than the Commonwealth of Pennsylvania.

9. Defendant James Iovine is the President of Interscope Records and resides in a state other than Pennsylvania.

10. Defendant Seagram Co. is a company with a financial interest in Interscope and has its principal places of business outside of the Commonwealth of Pennsylvania.

11. Defendant MCA Inc. and/or Universal are corporations with a financial interest in Interscope and principal places of business in a state other than the Commonwealth of Pennsylvania.

12. Defendant Death Row Records, Inc., is a California Corporation with its principal place of business in California.

13. David Kenner is an attorney representing Death Row Records, Inc., may have a proprietary and/or other financial interest in Death Row Records, and resides outside the Commonwealth of Pennsylvania.

14. Defendant Afeni Shakur who resides in a state other than Pennsylvania is the co-administratrix of the Estate of deceased Defendant Tupac Shakur.

15. Defendant Richard Fischbein who resides in a state other than Pennsylvania is the co-administrator of the Estate of deceased Defendant Tupac Shakur.

16. At all times relevant to this Complaint, up until his death on September 13, 1996, deceased Defendant Tupac Shakur was a servant, agent, apparent agent and/or employee of Defendant Death Row Records and was acting within the course and scope of employment for Death Row Records.

17. At all times relevant to this Complaint, James Iovine was a servant, agent, and/or employee of Interscope Records and was acting within the course and scope of employment for Interscope Records.

18. At all times relevant to this Complaint, David Kenner was a servant, agent, and/or employee of Death Row Records, Inc. and was acting within the course and scope of employment for Death Row Records.

19. At all times relevant to this Complaint, Defendant Interscope Records had an exclusive distribution agreement with Defendant Death Row Records through which Interscope Records distributed under its label, recordings produced by Defendant Death Row Records.

20. At all times relevant to this Complaint, Defendant Interscope Inc., was the managing general partner of Defendant Interscope Records.

21. At all or various times relevant to this Complaint, Interscope Records was 50% owned by Seagram Co.'s MCA Inc.

22. At all or various times relevant to this Complaint, Interscope Records was owned in part by Time Warner or Time Warner had a financial interest in Interscope.

23. Prior to February, 1996, Plaintiff C. Delores Tucker was the leader of a large group of religious, moral, and law abiding citizens who marched, lobbied, and campaigned against the pornographic and drug oriented misogynistic lyrics of "gangsta" rap as created, promoted, distributed, and marketed by various defendants to minors without restriction.

24. "Gangsta rap" is a slang expression using vernacular for the word "gangster" which, by definition refers to one engaged in anti-social or criminal behavior. Furthermore, the music contains vile, profane, obscene and indecent lyrics which glorify drugs, violence, and illicit sex. "Rap" or "Hip Hop" is a form of music, more spoken than sung, and can be distinguished from "gangsta rap" in

that it chronicles life in the ghetto without obscene and indecent lyrics, and may have redeeming social value.

25. Various defendants involved with Death Row Records and "gangsta" rappers take pride in the sex, drugs and "gangsta" violent behavior and its influence on increased record sales.

26. Plaintiff has focused her attention on stopping the production and distribution of said music to impressionable youth, because it tends to corrupt the morals of minors, in violation of 18 Pa.C.S.A. §6301(a), that some of it is obscene and unprotected by the Constitution, and some is "explicitly sexual material" in violation of 18 Pa.C.S.A. §5903(c). See Exhibits "A" and "B" attached hereto.

27. Said efforts met with widespread support across political, racial and economic lines, including support from William Bennett, former U.S. Secretary of Education, U.S. Senator Joseph Lieberman, Majority Leader and Vice Presidential candidate Robert Dole, and General Colin Powell.

28. In February, 1996, Defendant Interscope Records, distributed under its label, "All Eyez On Me", which is a record containing music performed by deceased Defendant recording gangsta rap superstar Tupac Shakur and produced by Defendant Death Row Records.

29. Contained on the aforementioned recording entitled "All Eyez on Me" are recordings entitled "Wonda Why they Call B" and "How Do You Want It."

30. Contained in the aforementioned recording entitled "How Do You Want It" were lyrics stating "C. Delores Tucker you're a mother fucker, instead of trying to help a brother you destroy a nigga."

31. Contained in the aforementioned recording entitled "Wonda Why they Call B" were lyrics stating "Got your legs up trying to get rich. Keep your head up and your legs closed Dear Ms. Delores Tucker" alluding to prostitution and tells why women are called bitches.

32. In January, 1996, Plaintiff C. Delores Tucker engaged in a lawful protest against the sale of gangsta rap music to minors by Defendant MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania.

33. On March 2, 1996, Plaintiff again, in the exercise of her constitutional right to protest, engaged in a protest on the premises of Defendant, MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania to stop the sale to minors of sound recordings containing sexually explicit lyrics as expressly prohibited by 18 Pa. C.S.A. §5903 and 18 Pa. C.S.A. §6301(a). See Exhibits "A" and "B".

34. As a result of her lawful protest, Plaintiff was arrested, handcuffed, and forcibly removed by police from the premises of Defendant MTS, Inc., under the trade name of Tower Records.

35. The aforementioned removal of Plaintiff C. Delores Tucker from the premises of Defendant MTS, Inc., under the trade name of Tower Records, took place under the express direction or with the knowledge and consent of Defendant MTS, Inc., under the trade name Tower Records.

36. Sometime after February 1, 1996, Defendant MTS, Inc., under the trade name of Tower Records, nevertheless offered for sale and sold to minors the aforementioned sound recording entitled "All Eyez On Me", and other gangsta rap albums containing sexually explicit messages, offensively coarse language and lewd and indecent words about Plaintiff C. Delores Tucker.

37. Defendants all participated in various ways, in the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" which contained sexually explicit messages, offensively coarse language, and lewd and indecent words about Plaintiff C. Delores Tucker in violation of 18 Pa. C.S.A. §5504.

38. In August, 1995, Defendant Interscope filed suit against Plaintiff C. Delores Tucker in California charging her, *inter alia*, with Inducement to Breach the Contract between Death Row and Interscope.

39. Defendants knew full well that Plaintiff had done no such thing and filed the false claim only to embarrass her, to cause emotional distress and to deter her crusade against gangsta rap.

40. In May, 1997, the U.S. District Court for the Central District of California (Case No. CV 95-5444), Judge M. Takasugi issued an opinion that there was no breach of contract and that Plaintiff did not induce a breach of the contract as alleged by Interscope, which of course they already knew.

41. Following the lawsuits and the release of the aforementioned recordings, Plaintiff, C. Delores Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena. Indeed, two prominent murders have been reported since the unsolved murder of Tupac Shakur in September, 1996.

42. Since the lawsuits and the release of the aforementioned recordings Plaintiff, C. Delores Tucker has received death threats.

43. The lawsuits and the release of the aforementioned recordings were intended to and did cause Plaintiff C. Delores Tucker severe emotional distress.

44. By using vile and offensive language, the recordings have held her up as an object of scorn to more than 5,000,000 people, including children in Philadelphia and elsewhere.

45. Defendant Co-administrator of the Estate of Tupac Shakur has continued to defame and harass plaintiff by holding her up in a false light even after the complaint in this matter was filed on June 21, 1997.

46. Defendant Fishbein made false and misleading statements regarding the claim herein, through published statements that C.

Delores Tucker filed suit because of a "loss of her sex life." This statement was untrue, and Defendant Attorney Fishbein should have known it was untrue.

47. Since the lawsuits and the release of the aforementioned recordings C. Plaintiff C. Delores Tucker has suffered defamation of character and reputation.

48. Plaintiff, who is frequently called upon to speak at churches throughout the country, is a moral and religious daughter of a well-known, respected Philadelphia minister, now deceased, and has siblings, extensive family, relatives, and thousands of friends in Philadelphia and throughout the country and world, who have heard or heard about the said recording and lawsuits.

49. As a result, Plaintiff C. Delores Tucker, has incurred medical expense; has undergone mental pain, suffering, and inconvenience; loss of life's pleasures; fears for her life; has lost her personal freedom to travel freely where and when she desires; has suffered from insomnia, high blood pressure, severe headaches, weight loss and weakness; and claim is made therefor.

50. As a result of the aforesaid injuries, Plaintiff C. Delores Tucker will incur medical expense; will undergo mental pain, suffering, and great inconvenience; loss of life's pleasures; fear for her life; lose her personal freedom to travel freely where and when she desires; suffer from insomnia, high blood pressure, severe headaches, weight loss and weakness; and claim is made therefor.

51. As a result, Plaintiff C. Delores Tucker has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

52. Plaintiff's husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT I—PRELIMINARY INJUNCTION

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc. Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Death Row Records, Inc., Estate of Tupac Shakur, Richard Fischbein as Co-Administrator of the Estate of Tupac Shakur, Afeni Shakur as Co-Administratrix of the Estate of Tupac Shakur, Time Warner, and David Kenner.

51. Paragraphs 1 through 50 are of this Complaint are incorporated herein by reference.

53. Plaintiff C. Delores Tucker has been and will continue to be irreparably harmed by the distribution and sale of the aforementioned gangsta rap recording "All Eyez On Me" by Defendants, for she has incurred medical expense, undergone mental pain, suffering and inconvenience; loss of life's pleasures; fears for her life; has lost

her personal freedom to travel freely where and when she desires; has suffered and will continue to suffer from insomnia, high blood pressure, severe headaches, weight loss and weakness, all as a result of the sale and distribution of aforementioned recording.

54. Therefore, Defendants should be enjoined from the distribution and sale of the aforementioned recording entitled "All Eyez On Me."

WHEREFORE, Plaintiffs respectfully request that this Court enjoin the Defendants from the distribution and sale of the aforementioned recording entitled "All Eyez on Me."

COUNT II—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Death Row Records, Inc., Estate of Tupac Shakur, Robert Fischbein as Co-Administrator of the Estate of Tupac Shakur, Afeni Shakur as Co-Administratrix of the Estate of Tupac Shakur Time Warner, and David Kenner.

55. Paragraphs 1 through 53 of this Complaint are incorporated herein by reference.

56. Deceased Defendant Tupac Shakur's conduct as set forth above was extreme and outrageous.

57. As a direct and proximate result of Defendant Tupac Shakur's extreme and outrageous conduct as set forth above, Plaintiff C. Delores Tucker suffered severe emotional distress including but

not limited to, feelings of fright, shock, humiliation, and outrage.

58. As a direct and proximate result of Defendant Tupac Shakur's extreme and outrageous conduct set forth above, Plaintiff C. Delores Tucker suffered from physical manifestations resulting from the aforementioned severe emotional distress including but not limited to insomnia, high blood pressure, severe headaches, weight loss and weakness.

59. Defendants all participated in various ways, including the bringing of lawsuits, submitting Plaintiff Tucker to eleven days of depositions, the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" for the specific purpose of causing Plaintiff C. Delores Tucker to suffer extreme distress, fear for her life, and to lessen her resolve against "gangsta" rap.

60. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgment against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III—SLANDER

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Death Row Records, Inc., Robert Fischbein as Co-Administrator of the Estate of Defendant Tupac Shakur, Afeni Shakur as Co-Administratrix of the Estate of Defendant Decedent Tupac Shakur, Time Warner, and David Kenner.

61. Paragraphs 1 through 55 of this Complaint are incorporated herein by reference.

62. Deceased Defendant Tupac Shakur's aforementioned lyrics referring to Plaintiff C. Delores Tucker in "All Eyez On Me" were false and defamatory when produced, marketed, distributed and sold.

63. Deceased Defendant Tupac Shakur's aforementioned defamatory lyrics were produced with malice, meaning that said lyrics were produced with knowledge that they were false.

64. Defendants other than Deceased Defendant Tupac Shakur knowingly participated in the creation, marketing, distribution, and sale of the slanderous recording "All Eyez On Me" and refused to recall same even though there was precedent involving antisemitic lyrics by Michael Jackson.

65. As a result of the malicious lyrics, Plaintiff C. Delores Tucker's reputation has been subject to ridicule, insult, and her reputation damaged.

66. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the

safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT IV—INVASION OF PRIVACY

C. Delores Tucker and William Tucker v. MTS Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Death Row Records, Inc., Robert Fishbein as Co-Administratrix of the Estate of Defendant Tupac Shakur, Afeni Shakur as Co-Administratrix of the Estate of Defendant Decedent Tupac Shakur
Time Warner and David Kenner

67. Paragraphs 1 through 65 of this Complaint are incorporated herein by reference.

68. Deceased Defendant Tupac Shakur's lyrics contained in the aforementioned recording "All Eyez On Me" were intentionally created, recorded, marketed/distributed, sold, and not recalled for the purpose of intruding upon the private affairs and concerns of Plaintiff C. Delores Tucker.

69. Defendants all appropriated to their own use and benefit, the name of C. Delores Tucker by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me.".

70. Defendants all participated in various ways in placing Plaintiff C. Delores Tucker before the public in a false light of a kind highly offensive to the reasonable man by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

71. Defendants all participated in various ways in unreasonably and seriously interfering with Plaintiff C. Delores Tucker's interest in not having her name or likeness exhibited to the public by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

ANGINO & ROVNER, P.C.
/s/Richard C. Angino, Esquire
Attorney I.D. No. 07140
4503 North Front Street
Harrisburg, PA 17110
Counsel for Plaintiff

Dated: 8/27/97

CERTIFICATE OF SERVICE

I, Shirley Corman, an employee of Angino Rovner, PC, hereby certify that I have this day served a copy of the foregoing Amended Complaint via first class mail, postage prepaid, upon the following:

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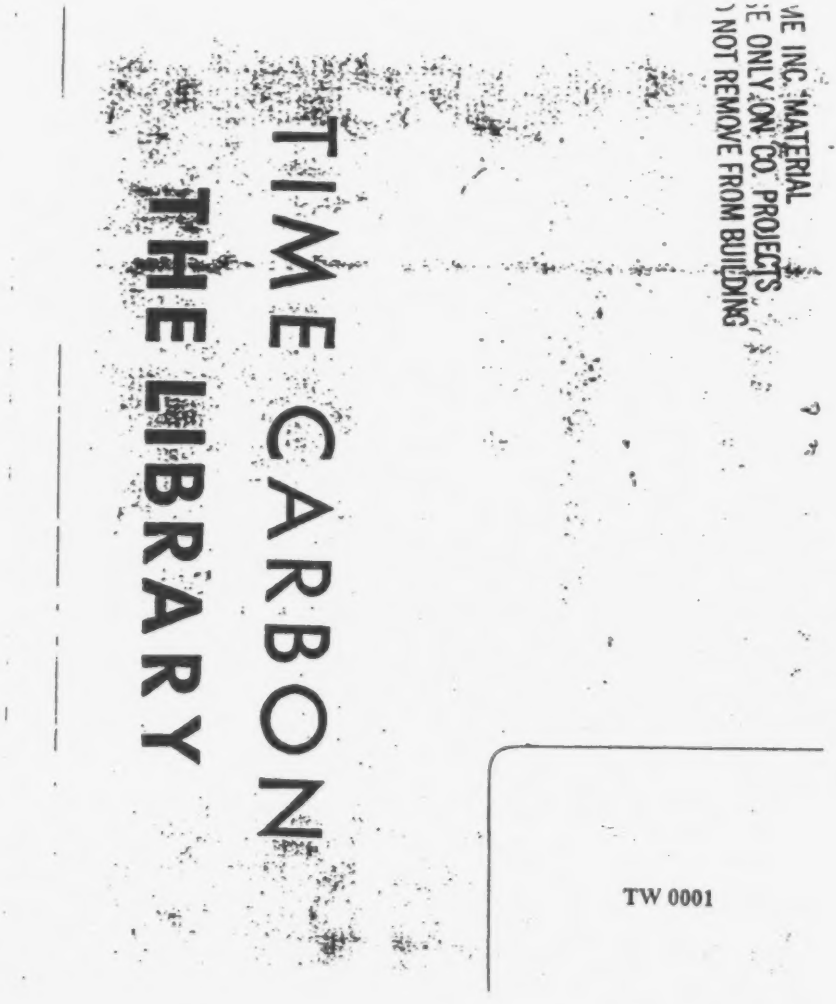
/s/Shirley Corman

Dated: 8/27/97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Rolling Stone Sept 18, 1997 p 33

TW 0002

ON

Steve Greenberg be-
ended a Hanson show
Kellerville, Kan.
"This is gonna be a
Greenberg recalls. At
ys, "I went around the
men there weren't any
n the corner and that it
And it wasn't."
Greenberg signed them
hooked the boys up
pop music's top song-
writers (among them,
d and Mark Hudson).
Greenberg recently
Dust Brothers (Beastie
and Stephen Lironi
to produce.

nloads an-
sugar pack
l's mouth.
my finger,
came off!"
ams.

ours signed, it was just
saw it in the paper and
ge, 'OK,' " says Zac,
gh his plate of french
s like, when I turn n,
m. 'I'm n.' "
he boys are devout
r album is dedicated to
classes and writers and
ge to grow, to him in
find their purpose").
ove does not address
ne lyrics are meditat-
, feelings and girls –
anyway. Take the gor-
ucy."
cowers," says Taylor.
ce."
ow Schroeder's like,
me?" says Zac. "I'm
? Schroeder. And how
ey, get off my back,'
t, and, in the end, he

songs are really just
tease. "Like, fictional
ituation."
azy "Madeline," says
a chorus of 'Have we
ersound again,' and it
with a name."
another pack of sugar
'I bit my finger, and it
worse.

the band launches into its bouncy
new single, "Where's the Love," the
girls, a blur of gangly legs and color-
ful dresses, shriek loudly. Sometimes it
gets so bad that the Hansons have to
wear earplugs onstage.
Nicole, Jillian and Tim get up at 6 in
the morning to travel here from Staten
Island, NY. "In the 'MMMBop' video,
Taylor's wearing a red shirt," says Nic-
ole. "That's why we all wore red."
Tim's older sister, the chaperone,
comes over to talk. "Lowrent" blares
Tim through disturbed teeth. "Get out
of here!" This is their gig.
"It's really neato, because I get to
meet Hanson," says another fan,
Stephanie. "I said, 'Hi,' and then
they were all like, 'Hi,' and they
waved to me!"
Fifteen or so New York policemen
are here, presumably to prevent stor-
ing. Most are uninterested.
"It sounds like, frickin' like the
Jackson 5 or somethin'," says one.
The nipple-voiced Taylor, especially,
has star quality, but Isaac's Jacksonville
rejoinders show promise, too.
After the show, the three take a
quick break. "These last two days
we've had to get up early for morning
shows," says Taylor. "And tomorrow
we get up at 4 to warm up our voices
for a 7 o'clock radio show. These
days, it's kind of sad, but you usually
want to get back and go home, and go
to sleep."
The group is preparing for a tour,
but it probably won't happen until the
end of the year. "We want to give our
fans their money's worth," says Isaac.
"It's always so unsatisfying when
bands aren't . . . satisfying." (Which
is absolutely true, if you think about
it.) They plan on covering a slew of
tunes from the '70s and '80s. "It's al-
most a shoo-in that we'll do 'Gimme
Some Lovin',' and we're almost defi-
nitely doing 'Shake Your Tail
Feather,' from the Blues Brothers,"
Isaac reports.
But first the guys are heading to
Tulsa for a 10-day vacation. "You've
gotta pass yourself," says Zac. "You
can't just go all-out."
They know they're missing out on
a normal childhood. They don't care.
"All of our friends would just die to
be able to do what we're getting to
do," says Taylor. "A lot of them have
never been to New York or Europe or
even out of their home state. And
we're getting to – not to mansion do
what we love to do, which is sing."
So, tired but enthused, they are off
to Tulsa, where they will play a little
laser tag, go to their beloved arcade
and hit the water park. "We're going
to go to this lake and rent a house –

THOSE SLEAZY, B.A.D.D people
about it. Apparently it's
open season on the debt sup-
port's estate. In July, a woman
– who was shot and paralyzed at
an Arkansas club where Shakur
was performing in 1993 – won a
judgment for $16 million from
Shakur's estate. Attorney
, co-administrator of the
estate, has already filed an appeal.
Next, a battle is brewing between
Shakur's mother,
(the
other co-administrator), and his
once-estranged biological father,
William Garland. Afeni had pre-
dicted for me present of the Shak-
ur estate – estimated at more
than one million – claiming that
Garland was dead. Garland, who
is very much alive, is making half of the
estate. A trial is currently under way.
The last and perhaps most bizarre
claim is from end-of-the-rainbow
, who is suing for no million-

Isn't he lovely? Hill has a baby boy.

-mended sum the band's backup will be a version of "Free Music" recorded with members of the Seattle band
. The song will appear on the bonus CD A Very Special Christmas 3, out on Oct. 7. The singer also appears on the soundtrack for the Dec. 25 film Great Expectations. Cornell's acoustic "Seasoner" is joined by new songs from
, the
, and
, and reunion glimmer twins the
and
and
and
and early
influences. "I've been listening to a lot of
," says Welland. The singer is currently finishing songs for his first solo album, due out early next year. "It's classic pop," says Welland, who also points to
and the first
record as influences. "It's different from an STP record, but it still rocks." Welland will tour after the album's release. —MATT HENDRICKSON

GRAPEVINE

All by myself: Welland (above) and Chris Cornell (right) release solo work.

death." . . . PIGGY LANGTON HILL gave birth to a son, DEE DEE, on Aug. 3. In between 4 a.m. feedings, Hill

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Gang-Related, will be distributed by the EMI-affiliated Priority Records. However grimly, Death Row has served its purpose and though it could generate millions in revenue on Shakur's posthumous releases and other artists' recordings for years to come, the illusion of a gangsta's paradise has been shattered n

LANGUAGE: ENGLISH

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USA TODAY

August 4, 1997, Monday, FINAL EDITION

SECTION: LIFE; Pg. 2D

LENGTH: 231 words

HEADLINE: Lawsuits go after Shakur estate

BYLINE: Arlene Vigoda

BODY:

The estate of gangsta rapper Tupac Shakur is under attack.

Anti-gangsta rap activist C. DeLores Tucker filed suit in Philadelphia last week, asking for $ 10 million from the slain rapper's estate. She claims two songs on his album All Eyez on Me made derogatory references to her. Tucker alleges that the [illegible] lyrics diminished her [illegible] wife and her husband's [illegible] song the lyrics say, "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker. "

Also, William Garland, Shakur's biological father, is suing for half of his son's estate, estimated at more than $ 20 million. That case will go to trial today in L.A.

"It's ridiculous," says attorney Richard Fischbein, co-administrator of the estate. "Even though he was a nonexistent, deadbeat dad, he thinks he's entitled to collect money."

And a woman who was shot and paralyzed at a Arkansas club where Shakur was performing sued and won a judgment against the estate for $ 16.6 million. Shakur's lawyers plan to file an appeal Wednesday.

Says Fischbein: "Afeni (Shakur's mother and administrator of the estate) will not settle. She'd rather fight and lose than pay one cent to any of these pirates."

Shakur was shot as he rode in a car near the Las Vegas Strip Sept. 7. He died six days later at a local hospital.

TW 0003

GRAPHIC: PHOTO, B/W, AP

LANGUAGE: ENGLISH

LOAD-DATE: August 04, 1997

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The Washington Post

August 02, 1997, Saturday, Final Edition

SECTION: STYLE; Pg. C03; NAMES & FACES

LENGTH: 504 words

HEADLINE: Names & Faces

BODY:
Not-in-the-Mood Music?

Activist C. DeLores Tucker, head of the National Political Congress of Black Women, has sued the estate of slain rap artist Tupac Shakur, saying his lyrics slandered her and damaged her relationship with her husband of more than 40 years, William Tucker.

Tucker and former U.S. drug policy director William Bennett campaigned to stop the distribution of violent and graphic "gangsta" rap and rock lyrics. She sued Shakur's estate for $ 10 million earlier this week in Philadelphia, claiming that Shakur's 1996 CD "All Eyez on Me," which contains derogatory and sexual references to her, caused her "great humiliation, mental pain, and suffering" and contributed to loss of her husband's "advice, companionship and consortium."

"It's hard for me to conceive how these lyrics could destroy her sex life," said Richard Fischbein, an attorney who oversees Shakur's estate.

Bye-Bye, 'B&B'

Beavis and Butt-head, MTV's animated teenagers, have been given the ax.

The last original episode of "B&B" is scheduled to air Oct. 10. MTV and the cartoon's creator, Mike Judge, agreed to call it quits after a four-year run.

"We've always had a great relationship with Mike Judge, but after 220 episodes, we decided it was time to move on," said MTV spokeswoman Sheryl Jones.

O.J. Loses the Piano

O.J. Simpson's piano was hauled out of his home in Los Angeles yesterday.

Copyright 1997 [redacted]
Newsweek

September 1, 1997 , UNITED STATES EDITION

SECTION: BUSINESS; Legal Affairs; Pg. 48

LENGTH: 648 words

HEADLINE: Grabbing at a Dead Star

BYLINE: BY JOHNNIE L. ROBERTS

HIGHLIGHT:
Lawsuits plague rapper Tupac Shakur's estate

BODY:
RAP STAR TUPAC SHAKUR'S ASHES had hardly cooled before the gold rush began. Now, almost a year after his death, his mother is defending the estate from an old lover who turned up to prove he's Tupac's father. An Arkansas court has already awarded $ 16.6 million to a woman who was shot at a Tupac concert. Until a tentative settlement last week, Tupac's label, Death Row Records, was demanding a $ 7 million slice, and its imprisoned CEO wanted millions more. [redacted] "Everybody is trying to get a piece of this," says attorney Richard Fischbein, who administers the estate with Tupac's mother, Afeni Shakur.

As Thomas Mann wrote, "A man's dying is more the survivors' affair than his own." Since Tupac was murdered last September, his multimillion-dollar legacy has become the contentious affair of kin, colleagues and alleged opportunists from L.A. to Australia. In his lifetime, Tupac's profane rap lyrics and violent encounters made him controversial, helping to swell by tens of millions of dollars the coffers of Death Row and its corporate benefactors, Interscope Records, Time Warner and Seagram's Universal (formerly MCA).

Yet Tupac was almost broke when he died. Alleging massive fraud and conspiracy, Fischbein and Afeni Shakur sued Death Row, its jailed CEO, "Suge" Knight, and its lawyer, David Kenner. They owed Tupac at least $ 9.9 million, the suit alleged, and $ 7.1 million more in expenses charged to his account that he hadn't incurred, including $ 120,000 for a house Kenner rented. As of last Friday, the estate was close to settling on its terms, according to Fischbein. Even before that, he adds, there was $ 7 million on hand from royalties and movies. A settlement could ultimately push the estate's value to $ 50 million, estimates one person close to the matter.

The fortune increases the stakes in the ugly probate battle in Los Angeles between Tupac's parents. Tupac had no will, but there seems little doubt that he would have wanted his mother to inherit. The identity of his biological father had always been in doubt. Although Afeni had once been a confessed drug addict, her son loved and supported her, writing a song about her titled "Dear

Mama." But California law requires the estate to be split by the parents if there's no will. Enter William M. Garland, who has established paternity through DNA testing. "Afeni had contended that Tupac's father was dead," says Garland's attorney, Mitchell Reinis. Says Fischbein: "We call it the case of the deadbeat dad. He won't be rewarded for his lack of interest in his son."

The most serious blow to the estate resulted from a 1993 tragedy in Pine Bluff, Ark., in which Jacquelyn McNeasley, 27, was struck by a stray bullet at a Tupac concert. Last November a judge granted damages of $ 16.6 million when Tupac's representatives failed to show at a hearing. Fischbein says Tupac was never properly notified of the lawsuit and that he himself knew nothing of it until he was phoned by MTV after the judgment. The estate is appealing. "The police report totally said Tupac had nothing to do with it," Fischbein says.

Fischbein fairly smirks about the suit by Tucker, a persistent crusader against gangsta rap. On an album last year, Tupac addressed Tucker as a "mother-f--ker," and he suggested that she was a prostitute -- at least that's what she alleges in a lawsuit against the estate, Death Row and others. Among other things, she claims [redacted] humiliated and can no longer have sex with her husband.<Says Fischbein: "I can't wait to hear her testimony on that subject." Her attorney, Richard Angino, says the lyrics "affected the family union." On that note, Tupac will rest in peace.

GRAPHIC: Picture 1, Broke when he died: But the estate could grow to $ 50 million, JEFFREY NEWBURY -- OUTLINE; Picture 2, The critic: Lyrics affected 'family union', MARIO RUTZ -- ZUMA; Picture 3, Death Row boss: Demanding a slice, LAUREN GREENFIELD -- SYGMA; Picture 4, Prodigal dad: DNA proves paternity, LISA TERRY -- GAMMA-LIAISON

LANGUAGE: ENGLISH

LOAD-DATE: September 02, 1997

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Appendix

FOCUS - 2 OF 33 STORIES

Copyright 1997 Sentinel Communications Co.
THE ORLANDO SENTINEL

September 19, 1997 Friday, METRO

SECTION: RAVE; Pg. X3

LENGTH: 480 words

HEADLINE: ITS BEEN AN EVENTFUL YEAR SINCE SHAKURS DEATH

BYLINE: Amar Shah - Dr. Phillips High

BODY:
Did you hear about the rose that frew form the crack in the concrete. Proving that natures law is wrong, it learned to walk without having feet. Funny it seems, but by keeping its dreams, it learned to breathe fresh air. Long live the rose that grew from the concrete when no one else cared.

2Pac

Tupac Amaru Shakur was that rose. As the seed began to germinate, the conditions surrounding his upbringing became an unrelenting interval of violence and poetic justice. The murder, the guns and the drugs all contributed to the growth of thorns from its stem.

The seed eventually blossomed into a rose, which gave way to many admirers and many critics. The rose in the concrete attempted to thrive in the conditions in which it was born, but it was too much. The petals began to fall to the ground. Finally, the last petal waned delicately toward the earth.

As the people walk past the rose in the concrete, they dont see the beautiful petals that once bloomed from the flower; they only see the thorns in their memories.

On September 13, 1996, the clock read 4:03 p.m. at a hospital in Las Vegas as Shakur took his last breath and the wounds from his bullet-ridden body took their toll. One year later, the legacy and the memories of his musical and poetic talents lay submerged in a pool of legal battles.

The weeks that followed after Tupacs death were full of conspiracy theories and rumors that he was still alive. The Los Angeles Police Department said witnesses did not cooperate with them and their investigation, when in fact, there was an abundance of spectators who witnessed the shooting.

To this day, the case remains open and idle. The investigation has not brought anything new to the surface.

Though Tupac is no longer living, in the business world he lives on. More than 150 unreleased songs valued at $100 million are tied up in courtroom

battles with Death Row Records.

[redacted] Tucker, [redacted] pain. Such a lawsuit like that should not even be allowed into the court system.

Though the legacy of Shakur has been hit from every angle since his demise, somehow his music lives on and the movies keep playing. With two unreleased albums and a new movie on the way, Shakur will not be far from the minds and hearts of his fans.

Perhaps the most electrifying endeavor of Shakurs work is a book of 150 poems he wrote that will be released in the upcoming year. The world now will see the poetic talent he possessed.

Where the rose in the concrete once stood, a garden is now built. A potpourri of flowers has emerged and now the legacy of the rose has forever left its mark.

GRAPHIC: PHOTO: Tupac Amaru Shakur

LANGUAGE: ENGLISH

LOAD-DATE: September 19, 1997

8 FOCUS - 8 OF 33 STORIES

Copyright 1997 Newspaper Publishing PLC
The Independent (London)

August 29, 1997, Friday

SECTION: FEATURES; Page 10

LENGTH: 1403 words

HEADLINE: Rap's off; Death Row, the late Tupac Shakur's record label, is going down in a blaze of gunfire, drug-trafficking and money-laundering. And that's not just the songs.

BYLINE: Edward Helmore

BODY:
Death Row, the record label that became synonymous with the hardcore music of gangsta rap and was at one point hailed as the Motown for the Nineties, is itself on death row. The fate of the LA-based company that once boasted the combined artistic and financial might of the late Tupac Shakur, Dr Dre and Snoop Doggy Dogg has been in the balance ever since Marion "Suge" Knight - the brains and, at 6ft 4in and 330lb, the brawn behind the label - was sentenced to a lengthy jail-term last December.

Since it was founded by Knight and Andre (Dr Dre) Young in 1992, Death Row has sold 26 million records and grossed in excess of $ 170m, but with Knight in prison, Shakur dead and Dr Dre defected to start his own Aftermath label, the record label is beset with mounting legal problems - including an FBI investigation into suspected drug ties.

Last week it emerged that Death Row is almost certain to be jettisoned by its distributor, the Universal Music Group, a company owned by the heir to Seagram distillers, Edgar Bronfman, after pressure from shareholders and regulators.

"The fundamental problem with Death Row is that those guys watched The Godfather one too many times," says a source familiar with the business. "Now, the whole thing is in shambles and there's nobody running it. Who needs to be in business with a label that is being investigated by the FBI and the IRS?"

As Death Row's long-feuding East Coast rival Bad Boy Entertainment dominates the charts with more mainstream records by Puffy Daddy, the label that has been calling itself "the new and untouchable Death Row" seems unable to find hits. This month, Lady of Rage's "Necessary Roughness" plunged to the bottom of the top 200 within weeks of release. Neither is the label finding new acts easy to

come by. A deal with the pop rapper-turned-wannabe- gangsta MC Hammer fell through and the deputy District Attorney in Los Angeles is under investigation for a conflict of interests after his daughter Gina Lange was signed up.

No one at the label knows when slated albums will be released and its last remaining major star, Snoop Doggy Dogg, has postponed a mid-summer release for an undetermined date in the future and is understood to be trying to get off the label altogether. Simply, Death Row has been left behind by the times and it is unlikely to match the success of past triumphs like Shakur's Don Killuminati: The 7 Day Theory, which sold 664,000 in its first week of release.

"The energy of the hip-hop scene is to clean it up and make it mainstream. There is a desire in the African-American community to function at the very centre of American culture," says the rock writer Anthony DeCurtis. "It gets lonely out there on the margins. However much money you are making, being both a target for social reformers and simply a target has worn people out."

And the fortunes of the once-glittering label may dull further - the US Justice Department is investigating Knight and others associated with the company for alleged tax violations and links to street gangs, drug- trafficking, money-laundering and violent acts. The investigation is looking all the way back into whether the seed money used to launch Death Row came from the Los Angeles drug kingpin Michael "Harry-O" Harris, currently in jail for drug dealing and attempted murder. According to the New Yorker, Harris's lawyer David Kenner was instrumental in setting up the label but acts for Knight and helps run the business.

Though the Justice Department will not confirm or deny the existence of the racketeering investigation and its conclusion could be months away, it could result in criminal charges and the label's assets being seized by the authorities, an unprecedented action in the music industry.

The music business has long been home to shady dealings and some in the industry credit Knight with organising the violent world of gangsta rap into a profitable business, but as Death Row has unraveled, more of Knight's bizarre and often threatening business practices are coming to light.

Earlier this year, the white rapper Vanilla Ice told how Knight had forced him to sign over his publishing rights in the late Eighties by dangling him by his feet off a high-rise building. Though Knight denies using such tactics, a suit filed by Ruthless Records alleges that in 1991 he threatened to beat the late rapper and label-owner Easy-E with lead pipes unless he released the creative force of Dr Dre from his existing contract.

As Death Row and the popularity of gangsta rap rapidly grew, Knight did nothing to curb his penchant for strong-arm tactics. The walls of his offices were painted red in a clear signal of his ties with the Bloods street gang, and in 1992 he was convicted of assault for drawing a gun on two rappers, pistol-whipping one and threatening to kill both. In another incident, a New York record producer was forced to strip naked and was beaten with Champagne bottles.

411a
Appendix

But as long as profits rolled in - a reported $ 100m in 1995 - the industry seemed happy to turn a blind eye. The problems began when Death Row's distributor Time-Warner came under pressure from shareholders after an outcry over the flagrantly violent and misogynistic lyrics that gangsta rappers like Snoop Doggy Dogg and Tupac Shakur tended to favour.

Time-Warner dropped both Death Row and its affiliate Interscope, which were then picked up 18 months ago by the Universal label for $ 200m with an option not to release any music it deemed objectionable. The money continued to roll in but gangsta rap was already beginning to show signs of overkill.

In March 1996, Dr Dre shed his gangsta skin, renounced the music's violent message, and severed his ties with Knight. To many, that was the end of Death Row but then, in September last year, the label's brightest star, Tupac Shakur, riding in Knight's white BMW, was murdered in Las Vegas after a Mike Tyson-Bruce Seldon fight. The killing, widely thought to be the work of a member of LA's In-Hood Crips gang, remains unsolved.

In March this year, Knight was convicted of breaking his probation by participating in a ringside brawl with members of the rival Crips gang on the night of Shakur's shooting and was sentenced to nine years in prison and disqualified from running the business. Death Row has since cut its staff by half and is being run by an associate of Knight with little music business experience, while the label's accountant is reportedly in hiding following death threats after company funds went missing.

Institutional creditors are also eager to know where the money has gone. Knight and Konner are being sued by American Express for $ 1.7m they ran up on platinum cards, and Afeni Shakur, Tupac's mother and a former Black Panther, is claiming $ 150m in damages from Death Row/Interscope after she discovered that her son died $ 4.9m in debt.

His estate is estimated to be worth $ 50m and the suit alleges that Tupac was owed at least $ 9.9m and $ 7.1m more in expenses he had not incurred, including $ 120,000 for a house Konner rented for himself and $ 23,000 for repairs to Knight's Porsche.

Perhaps the strangest legal action to be brought against Shakur's estate by C. Delores Tucker, the chairwoman of the powerful National Congress of Black Women and a longtime gangsta rap foe. She is looking for damages after claiming that Shakur called her a "motherfucker" on his last album, a slight that Tucker claims has ruined her 69% life with her [illegible].

With Death Row in chaos the label no longer holds much appeal and there are few reasons for Universal to retain the alliance. Moreover, it is in the financial interests of Universal's parent company, Seagram, to drop the label: this month, two state pension funds, Texas and Maryland, announced they might pull their investment in any company - namely Seagram - that distributes gangsta rap.

Still, other distributors are keen to step in. Two upcoming Death Row releases, Nate Dogg's "G-Funk Classics" and the soundtrack to the film

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August 2, 1997, Saturday, FINAL EDITION

SECTION: FEATURES, Pg. 2D, People And Places

LENGTH: 598 words

HEADLINE: Foe of gangsta rap claims it undermined her conjugal relations

SOURCE: From wire reports

BODY:

One of America's most outspoken foes of gangsta rap says Tupac Shakur's crude lyrics about her have wrecked her sex life.

C. DeLores Tucker sued Shakur's estate for $ 10 million this week in federal court in Philadelphia, saying the slain rapper's 1996 double CD "All Eyez on Me" caused her "great humiliation, mental pain and suffering."

She feels the vulgarity voiced by Shakur's conjugal relationships have undermined her sex life with her husband.

Richard Fischbein, co-administrator of Shakur's estate, said, "It's hard for me to conceive how these lyrics could destroy her sex life."

'Friends' can cost you, a network learns

"Friends" will be there for NBC -- but it will cost the network nearly $ 4 million per episode, sources say.

The network confirmed that it has negotiated a deal with Warner Bros. TV to secure broadcast rights to the show through season No. 8, or 1999-2000. The current contract would have run out at the end of this coming season.

Meanwhile, creator-producers Marta Kauffman, Kevin Bright and David Crane are said to be on board for the show's six-year duration through their lucrative deals with WSTV and NBC, though they are now dividing their time between "Friends" and their new NBC sitcom, "Veronica's Closet."

John F. Kennedy Jr. throws aviation fans for a loop

People at an aircraft convention were flying high after John F. Kennedy Jr. dropped in.

Kennedy, a self-described "lapsed pilot," toured the Experimental Aircraft Association Fly-In Convention Thursday in Oshkosh, Wis., drawing more attention than the antique planes and daredevil acrobats in flight.

"It's like a dream come true," said a gasping Jean Jovsag, 69, who met

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Jet

September 1, 1997

SECTION: ENTERTAINMENT; Pg. 62

LENGTH: 383 words

HEADLINE: C. DeLores Tucker Files $ 10 Million Lawsuit Against Tupac Shakur's Estate

BODY:

Dr. C. DeLores Tucker, an outspoken critic of gangsta rap, has filed a $ 10 million lawsuit against the estate of the late rapper Tupac Shakur charging that he made derogatory comments about her in his music.

Dr. Tucker, chair of the National Political Congress of Black Women Inc., says songs on Shakur's hit album All Eyez On Me have caused her "mental pain, suffering and inconvenience."

The suit also notes because of Shakur's music, Dr. Tucker has "suffered severe emotional distress including, but not limited to, feelings of fright, shock, humiliation and outrage."

On the tune Wonda Why They Call U B h Shakur raps: "Get your legs up trying to get rich. Keep your head up and your legs closed Dear Ma. Delores Tucker." Dr. Tucker states in the suit that the lyrics allude "to prostitution and tells why women are called bitches."

On the tune How Do You Want It Shakur raps: "C. Delores Tucker ... instead of trying to help a brother you destroy a nigga."

The suit filed jointly by Dr. Tucker and her husband, businessman William Tucker, states that Mr. Tucker "as a result of his wife's injuries, suffered a loss of [illegible]."

The suit, which alleges intentional infliction of emotional distress, slander and invasion of privacy, was filed in the U.S. District Court for the Eastern District, Pennsylvania. It also names Tower Records of Philadelphia; Interscope and Death Row Records of Los Angeles; Ted Field and James Iovine, officials of Interscope, Time Warner, Seagram Co., MCA Inc. and others.

Dr. Tucker said in a press statement that Shakur's album All Eyez On Me, released in 1996, "specifically defamed me in a most degrading way. It called me a personal obscenity . . . for fighting against this music. And I feel that those who produce and promote this recording all over the world are equally

TW 00013

guilty of defamation."

She added, "Not only have I been defamed, I feel thousands of young women have been defamed by this greed-driven, race-driven and drug-driven music. This sexist lyrical filth particularly defames Black women, promotes drug use, violence and panders pornography to children," she stated.

Shakur was killed in a drive-by shooting in Las Vegas last year (JET, Sept. 30, 1996).

GRAPHIC: Picture 1, C. Delores Tucker; Picture 2, Tupac Shakur

LANGUAGE: ENGLISH

LOAD-DATE: September 08, 1997

People

SEP 22 1997

Shakur
Booty

Shakur Booty

Here's a new growth industry: [redacted] since his death, at least five suits have been brought against his estate, the most recent by a suspect in his murder. Last week [redacted] filed a personal injury suit claiming he was beaten up by [redacted] and friends hours before the rap star was killed. [redacted] lawyer, Richard [redacted], immediately fired back with a wrongful death lawsuit against [redacted]. Earlier, Shakur's mother, [redacted], won control of Shakur's master recordings from [redacted] Records, and settled a claim that the estate owed the company more than $7 million. An Arkansas woman's award of $16.6 million after being shot and paralyzed at a Shakur concert, is being appealed. Even Shakur's father is suing for a cut. The prize for the most bizarre suit, however, goes to anti-rap yearner [redacted], who claims that lewd remarks made about her on Shakur's album [redacted] caused her so much distress she and her husband have not been able to have sex. She wants $10 million.

Anderson

TW 00015

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - SOUTHEAST JUDICIAL DISTRICT

[redacted], individually and as Co-administrator of the Estate of Tupac Shakur, deceased; and RICHARD S. FISCHBEIN, as co-administrator of the Estate of Tupac Shakur,	CASE NO.
Plaintiffs,	COMPLAINT FOR DAMAGES: 1. WRONGFUL DEATH 2. PERSONAL INJURY 3. GENERAL NEGLIGENCE
-vs.-	
[redacted] JERRY BONDS, and JOHN DOES 1 to 100, inclusive,	
Defendants	

COME NOW the Plaintiffs AFENI SHAKUR, individually and as the co-administrator of the Estate of Tupac Shakur, and [redacted] as co-administrator of the Estate of Tupac Shakur, and for their causes of actions against the defendants allege as follows:

THE PARTIES

1. Plaintiff AFENI SHAKUR ("Afeni") is the mother of the deceased Tupac Shakur. ("Tupac") During all times mentioned herein, Tupac was a resident of Los Angeles County, State of California.

TW 00016

2. Pursuant to Letters of Administration of the Superior Court of California, County of Los Angeles, dated October

23, 1996, Afeni was appointed co-administrator of the Estate of Tupac Shakur (the "Estate").

3. Pursuant to Letters of Administration of the Superior Court of California, County of Los Angeles, dated October 23, 1996, RICHARD S. FISCHBEIN ("Fischbein") was appointed co-administrator of the Estate.

4. Defendant ORLANDO ANDERSON, ("Anderson") is at all times mentioned herein, a resident of the State of California. Plaintiffs are informed and believe and thereupon allege that at all times mentioned herein, that Anderson was a member of a Compton street gang known as the Southside Crips.

5. Defendant JERRY BONDS, ("Bonds") is at all times mentioned herein, a resident of the State of California. Plaintiffs are informed and believe and thereupon allege that at all times mentioned herein, that Bonds was a member of a Compton street gang known as the Southside Crips, and is known by the street name "MONK."

TW 00017

6. Plaintiffs have reason to believe and thereupon allege Defendants Bond, JOHN DOES 1 to 3, inclusive, and Anderson were, on or about September 7, 1996, the driver and passengers in a certain white Cadillac vehicle discussed with more particularity hereinafter. Plaintiffs have reason to believe and thereupon

allege JOHN DOE 1 was also the individual with Bond on September 11, 1996, at approximately 3:00 p.m., when Bond and Doe #1 drove a late model Cadillac into the automotive shop at White and Alondra.

7. Plaintiffs have reason to believe and thereupon allege the Bond and Anderson are cousins.

8. Plaintiffs have reason to believe and thereupon allege, that JOHN DOES 4 to 100, inclusive, participated with Defendants Anderson and John Does 1 to 3, inclusive, in the shooting of Tupac as more fully described hereafter, and conspired with and assisted Defendants Anderson and John Does 1 to 3, inclusive, in that shooting.

9. Plaintiffs are presently unaware of the true names and identities and/or capacities of defendants named herein as DOE, including Does 1 to 100, inclusive, and therefore sue said defendants by such fictitious names pursuant to California Code of Civil Procedure §474. Plaintiffs will allege the true names and capacities after the same have been ascertained. Plaintiffs are informed and believe and thereupon allege, that each defendant Doe is negligently or otherwise responsible and liable to Plaintiffs for the injuries and/or damages alleged herein. TW 00018

10. Plaintiffs are informed and believe and thereupon allege that at all times mentioned herein, each defendant herein,

whether designated by name or by Doe, were the agents, employee, employer and/or joint venturer or co-conspirator with each of the other defendants and in doing the things alleged herein were acting in the course and scope of such relationship, agency and employment and for the furtherance of such conspiracy, and were acting with the prior knowledge, permission and consent, or if not prior, each of said defendants acquiesced to the conduct of each of the other defendants.

GENERAL ALLEGATIONS

11. During his lifetime, Tupac was an extremely successful music publishing, recording and performing artist, as well as being a successful motion picture actor.

12. Among the albums published by Tupac during his lifetime were: "Thug Life," "Strictly 4 My N.I.G.G.A.Z.," "2Pacalypse Now" and "All Eyez On Me." Subsequent to Tupac's death, Death Row released "Makavelli," an album that immediately became number one on the charts and sold over 3 million copies.

13. Tupac appeared as an actor in "Juice," "Above the Rim," "Poetic Justice" and "Bullet." Subsequent to his death, "Gridlock'd" was released to favorable and critical reviews and "Gang Related" is scheduled to be released this fall.

14. Moreover, his songs were featured in numerous soundtracks from movies in which he did not appear as an acter.

EVENTS LEADING UP TO THE SHOOTING

15. Plaintiffs have reason to believe and thereupon allege that, in approximately July, 1996, Travon Lane (who goes by the street name "Tray")("Lane"), a person associated with Death Row Records, Inc. ("Death Row"), was in the Foot Locker Store in the Lakewood Mall, with Kevin Woods (who goes by the street name "K.W.")("Woods") and Maurice Combs (who goes by the street name "Lil Mo") ("Combs")

16. Plaintiffs have reason to believe and thereupon allege that Lane, Woods and Combs are associated with a street gang that goes by the name of "Mob Pirus," which is a branch of the street gang known as the "Bloods."

17. Plaintiffs have reason to believe and thereupon allege the Southside Crips have an ogoing rivalry with the Mob Pirus and that there have been several past confrontations between the Mob Pirus and the Southside Crips.

18. Plaintiffs have reason to believe and thereupon allege that there was a common perception that Death Row was in some manner affiliated with the Mob Pirus.

30. The caravan stopped for a red light at Flamingo and Las Vegas Boulevard, when a white Cadillac pulled up next to Tupac and Suge.

31. There were at least two, and possibly more, people in the Cadillac.

32. Plaintiffs have reason to believe and thereupon allege that Bonds was the driver of that Cadillac and Anderson was a passenger in the Cadillac.

33. Plaintiffs have reason to believe and thereupon allege that Anderson got out of the Cadillac and approached the BMW on the passenger's side.

34. Plaintiffs have reason to believe and thereupon allege that upon approaching the BMW, Anderson pulled a gun and started shooting at the BMW, willfully or negligently striking both Tupac and Suge.

35. Tupac was taken to the University Medical Center of Southern Nevada immediately after the shooting and was admitted to the UMC Regional Trauma Center.

36. Tupac injuries included a gunshot wounds to the right chest, the right thigh and the right hand.

37. Tupac died on September 13, 1996. Plaintiffs have reason to believe and thereupon allege that Tupac died as a result of the gunshot wounds he suffered in the shooting by Anderson.

FIRST CAUSE OF ACTION - WRONGFUL DEATH
AGAINST ALL DEFENDANTS

38. Plaintiffs incorporate paragraphs 1 to 37 and reallege the same as if fully set forth at length herein.

39. On or about or about September 7, 1996, Anderson discharged a gun in a willful and negligent manner, causing Tupac to be shot and thereby causing him serious grievous injuries requiring hospitalization and leading to his eventual demise on September 13, 1996.

40. The discharge of that gun was a part of, and in furtherance of, a conspiracy and joint venture to do injury to Tupac, Suge and Death Row in which Anderson, Bonds and Does 1 to 100, inclusive, were participants.

41. Prior to the death of Tupac, Afeni was totally dependent on him for her support and maintenance. As a result of the injuries to the decedent and his eventual death, Afeni has sustained special and general damages, including hospital bills, loss of income, loss of society, comfort, attention, service and

support of decedent, and have incurred funeral and cremation expenses.

SECOND CAUSE OF ACTION - FOR PERSONAL INJURY
(SURVIVAL ACTION)
PLAINTIFFS AFENI SHAKUR AND RICHARD S. FISCHBEIN,
AS CO-ADMINISTRATORS OF THE ESTATE OF TUPAC SHAKUR
AGAINST ALL DEFENDANTS

42. Plaintiffs incorporate paragraphs 1 to 41 and reallege the same as if fully set forth at length herein.

43. As a result of said injuries, Tupac Shakur, the decedent, was taken to the hospital and there suffered extreme pain, discomfort and injury from the moment of his injury to the moment of his death. In addition thereto, the decedent and his estate incurred medical bills for his hospitalization and lost earnings and loss of income from the date of his injury to the moment of his death.

44. The decedent during his life time was entitled to compensation for the damages described in the above paragraph and Plaintiffs Afeni Shakur and Richard S. Fischbein, as co-administrators, are claiming said damages for his estate.

THIRD CAUSE OF ACTION - FOR GROSS NEGLIGENCE
PLAINTIFF AFENI SHAKUR
AGAINST ALL DEFENDANTS

/cat:A/pri:R/sid:A/por:1/for: Ju:PM-TUPAC'SLEGACY Bjt --
TEXT
PM-Tupac's Legacy, Bjt,1052
Gangsta rapper lives on — in courtrooms, law offices
Eds: Sent Aug. 28 as b0107. Note language in 11th graf, "Two songs ..."
AP Photo NY343 sent Aug. 26
By LARRY McSHANE
Associated Press Writer
NEW YORK (AP) — Tupac Shakur, incarcerated before his birth and murdered before his 25th birthday, spent much of his too-short life outside the law. His tattooe proclaimed his philosophy: "Outlaw" on his left forearm, "Thug Life" across his torso.
His death has changed all that.
The gangsta rapper's unlikeliest legacy, forged in the year since his still-unsolved slaying, is legal, not musical — a litany of coast-to-coast litigation that could drag on for years.
Shakur lives on in the staid world of courtrooms and countersuits, law offices and legal papers. His posthumous alter ego is a white Manhattan attorney — Richard Flechbein, co-executor of the Shakur estate.
Even Shakur's unreleased music — more than 180 songs, valued at $100 million — is tied up in a court battle. Flechbein says he expects more "vultures" to "come out of the woodwork."
"Tupac has an estate," Flechbein explains bluntly. "He's dead. People see a payday."
Flechbein and Afeni Shakur, who gave birth to the slain rapper one month after her acquittal in a 1971 conspiracy trial, became co-executors on Oct. 23, 1996. Since then, the flow of lawsuits has been as hard and relentless as Tupac's lyrics:
—A $7.1 million suit by Death Row Records, demanding reimbursement for cash advances that Shakur allegedly used for cars, houses, jewelry and other expenses. The estate filed a 41-page countersuit, accusing Death Row of losing $50 million from Shakur to maintain the extravagant lifestyles of label head Marion "Suge" Knight and other executives.
More important than cash is control of at least two unreleased Shakur CDs and 152 additional unreleased songs. Death Row currently has custody of the master tapes. A Death Row spokesman and label attorney David Kenner both declined to comment on the legal fight. Knight is serving a nine-year jail term on a probation violation.
—A $10 million lawsuit by C. DeLores Tucker, a virulent opponent of gangsta rap. Tucker, who once labeled Shakur's music "pornographic scrud," claimed lyrics on Tupac's 5 million-selling album "All Eyez on Me" were so harrowing that it affected her sex life.
Two songs derisively mentioned Tucker by name. On one, "How Do U Want It," Shakur rapped: "DeLores Tucker, you'se a (expletive)/instead of trying to help a nigga, you destroy a brother."
Tucker did not returns calls to her Washington office. But in her lawsuit, she alleged Shakur had caused her "great humiliation, mental pain and suffering" — and damaged her sexual relationship with her husband, William.
—A contentious lawsuit filed by the rapper's father, William Garland, seeking 50 percent of Tupac's estate. Afeni Shakur angrily charged that Garland was a gold-digger who ignored his son for 18 years; Garland blamed her nomadic lifestyle for making it impossible to find Tupac.
"I'm the only person in here who lost somebody," Ms. Shakur snapped in early August. "He don't even know my son's birthday."
Garland's lawyer, Leonard Birdsong, rips Ms. Shakur as "an egomaniac" upset by publicity for Tupac's father. He also mentions her past crack addiction and alcohol problems; Tupac had said those woes forced him to leave his mother's house at age 17.
Flechbein dismisses Garland as "a deadbeat dad" who gave his son "$500 and a bag of

peanuts over the course o[illegible] his life." Birdsong indignantly cha[illegible]a Fischbein with "rewriting history to vilify my client." Garland only filed suit after Ms. Shakur twice submitted legal papers saying Tupac's father was dead, Garland says.

This parental struggle could give birth to another lawsuit. If he wins, Garland wants to be named the estate's co-executor.

—A November 1996 court award of $16.6 million to Jacquelyn McNeasley, who was shot and partially paralyzed at a 1993 Shakur concert in Pine Bluff, Ark. Fischbein is vigorously trying to set aside this judgment; the estate's Arkansas court papers carried the names of 17 attorneys, and asserted that Shakur was never ever notified of this lawsuit.

—A successful lawsuit by the estate to gain merchandising rights to Shakur's image. Previously, it received nothing from the lucrative sales of Shakur T-shirts, hats and other memorabilia.

There remain a handful of "smaller, irrelevent" lawsuits — including a libel suit stemming from another lyric on Shakur's last album, "The Don Killuminati" — that are unresolved, Fischbein acknowledges.

What the plaintiffs lined up at the Tupac trough may not know is that the rapper, whose last two albums sold more than 8 million copies, left very little behind.

Tupac's bank account contained $180,000 when he died at 4:03 p.m. on Sept. 13, 1996, six days after he was shot on the Las Vegas strip. "He owned no real estate," the estate claimed in court papers. "He owned no stocks and bonds. He owned two cars."

Where was the money? The estate's lawsuit against Death Row alleges the label should have provided him with $12 million royalties on the album "All Eyez on Me" and a $5 million advance on his next album.

Instead, with Shakur locked up by a handwritten three-page contract that he'd signed in prison, Death Row refused to provide Shakur with any financial accounting, the estate says.

Even worse, Death Row allegedly charged Shakur for items that the rapper never owned or knew about: $115,000 for jewelry, $120,000 in rent for a Malibu home, $23,857 for Porsche repairs. Shakur didn't own a Porsche; Knight did.

While Fischbein is bemused by some of the lawsuits — "C. DeLorse Tucker? Who ever expected that?" — he takes the estate very seriously. And he expects the battles to rage for years.

Afeni Shakur, he says, is "very, very tough and single-minded."

"She never expected her son to die before she did," Fischbein says. "She's never going to give in on any of this stuff — never. From her point of view, this could go on forever."

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music news

Tucker Claims Tupac Ruined Her Sex Life

by Marcus Errico
August 1, 1997, 1:15 p.m. PT

We all know that self-appointed morality maven [illegible] isn't a big fan of gangsta rap. After all, she and former drug czar William Bennett have been trashing rap music and performers since 1994, when they strong-armed Time-Warner into dumping Interscope Records--distributor of [illegible] home of Snoop Doggy Dogg and Tupac Shakur. More recently the duo, along with sometime cohort Senator Joseph Lieberman, has blasted Seagram-owned Universal, Bertelsmann, Sony, Thorn-EMI Music and PolyGram for releasing "pornographic smut" music.

Now, Tucker is back on her anti-rap soapbox, but this time, it's personal. Nearly a year after the death of Shakur, she's claiming the slain hip-hop star has ruined her sex life.

In a lawsuit filed this week in Philadelphia federal court, Tucker contends the rapper dissed her repeatedly on his 1996 mega-selling [illegible] LP. She claims lyrics on the double-disc set defamed her, causing her "great humiliation, mental pain and suffering," and hubby, William, "to suffer a loss of advice, companionship and consortium." She's suing for slander, infliction of emotional distress and invasion of privacy and asking for $10 million in damages.

Some have questioned the timing of the lawsuit--filed almost a year after Shakur was gunned down near the Las Vegas strip. Others, including an attorney who is co-administrator of the rapper's estate, are baffled by the allegations. "It's hard for us to conceive how these lyrics could destroy her sex life," Richard Fischbein told the Los Angeles Times. "But we can only wait for the proof to be revealed in court."

Two "lewd and indecent" songs in particular have peeved Tucker and her husband: "Heads Why They Call U Bytch" and "How Do U Want It." According to the suit--which also names Shakur's estate, mother Afeni Shakur, Death Row Records, Interscope Records, Time Warner, Seagram, Tower Records and others--one rap alludes to the rap critic partaking in the world's oldest profession: "Get your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. Delores Tucker."

Audio Clip: 2Pac, "Heads Why They Call U Bytch"
RealAudio | Install It

Tucker, who heads the National Political Congress of Black Women, a Washington, D.C., lobbying group, calls herself a "moral and [illegible]

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minister' in her suit. However, her reputation has come under fire by accusations that she once profited from ownership of slum properties in Philadelphia.

She has been wrangling in court with Death Row and Interscope for the last two years. Civil lawsuits filed in August 1995 by Death Row and Interscope accused Tucker of contractual interference and suggested she had an economic motive for criticizing rap.

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Tupac Shakur's Estate Sued--Again

by Joal Ryan
September 19, 1997, 5:43 p.m. PT

Will the person not filing a claim against the estate of Tupac Shakur, please call your lawyer: He's wondering what's taking so long.

As the one-year anniversary of the actor-rapper's death approaches Saturday, the once-promising artist's legacy is lost in a sea of lawsuits--the latest of which was filed Monday by no less than a onetime suspect in the Shakur murder.

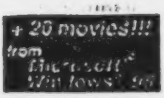
Orlando Anderson, a reputed member of Los Angeles' notorious Crips street gang, claims he suffered physical injuries, as well as emotional and mental distress, when Shakur and Death Row Records employees beat him up in the lobby of a Las Vegas hotel on September 7, 1996. The attack, captured on hotel security cameras, occurred shortly before Shakur, riding in a BMW powered by Death Row mogul Marion 'Suge' Knight, was ambushed by unknown assailants just off Vegas' famed Strip. Shakur, hit with four bullets, died six days later. He was 25.

Anderson was taken into custody by Las Angeles police last October 2 during a gang raid related to the Shakur investigation. He was released two days later--no charges filed. But as recently as February of this year, Las Vegas authorities still reportedly considered him a suspect in the still-unsolved case.

An attorney for Anderson denies the man played any role in Shakur's murder. And indeed, by filing the lawsuit, which seeks unspecified damages, Anderson isn't lying low--rather, inviting scrutiny of his Tupac connection. Anderson's complaint also names Death Row and Knight, now in jail for a parole violation relating to the hotel assault, as co-defendants.

The Anderson case joins a stampede of Shakur-related litigation, including:

- An Arkansas woman who wants the estate to fork over $16.6 million--the amount of a judgment awarded her by a court in her home state for injuries suffered at a Shakur concert in 1993. (The woman was shot and, subsequently, paralyzed.)
- Prominent gangsta-rap foe C. Delores Tucker who wants $10 million because, she alleges, Shakur made swipes at her on his 1996 album, All Eyez on Me, thereby ruining her sax life.
- Embattled Death Row Records which wants $7.1 million--reimbursements, it says, for advances Shakur received to buy cars, houses and jewelry.



find it!

a movie

(your search)

stuff!

info!!!

back to top

The sad punch line here is that when Shakur died his bank account read: $150,000.

The ledger may have recently evened out a bit. Knight reportedly settled a lawsuit (yes, another one) with Afeni Shakur, Tupac's mom and co-executor of his estate. The deal gave the Shakur camp control of 150 master recordings, worth an estimated $100 million on the retail market.

Oh, good. Now there'll be something at stake when Tupac's dad, William Garland, pursues (you guessed it) his lawsuit against Afeni Shakur for control of his son's money.

FIRST LOOK: Two Stories

Superman Coin Engaged

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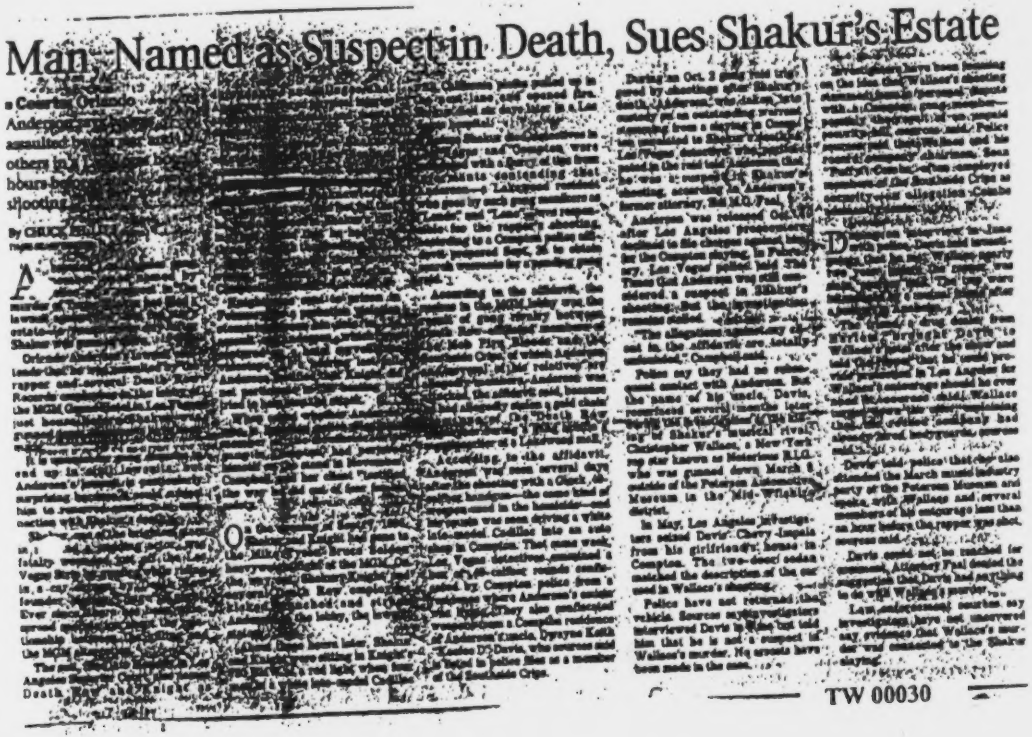


Man Named as Suspect in Death, Sues Shakur's Estate

TW 00030

Shakur

Booty

Here's a new growth industry: TUPAC SHAKUR litigation. In the year since Shakur's death, at least five suits have been brought against his estate, the most recent by a suspect in his murder. Last week Orlando Anderson filed a personal-injury suit that claimed he was beaten up by Shakur and friends hours before the rap star was killed. Shakur's lawyer, Richard Fischbein, immediately fired back with a wrongful-death lawsuit against Anderson. Earlier, Shakur's mother Afeni won control of Shakur's master recordings from Death Row Records, and settled a claim that the estate owed the company more than $7 million. An Arkansas woman's award of $16.6 million after being shot and paralyzed at a Shakur concert is being appealed>

TW 00031

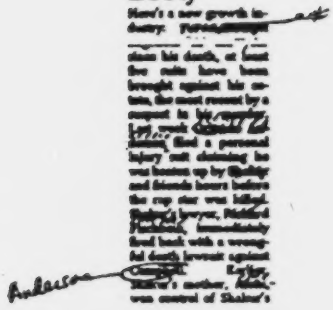
Jim Collins: was she suing the estate, or someone else e.g.

the promoter?//the estate◀.
L 35 Even Shakur's father is
36 suing for a cut. The prize
37 for the most bizarre suit,
L 38 however, goes to anti-
39 rap warrior C. DeLores
40 Tucker,▶Jim Collins: ID TK she is/was head of a semi-well known anti-rap organization (think she may have partnered with bennet in condemning time warner ◀ who claims that
L 41 lewd remarks▶Chris Porterfield: Can we use something sharper and more descriptive?◀ made
L 42 about her on Shakur's
L 43 album All Eyez on Me
44 caused her so much dis-
L 45 tress that she and her
46 husband have not been
L 47 able to have sex. She
48 wants $10 million. ▶Belinda Luscombe: "Every lawyer in my firm wants to be in th room for the deposition on that one, " says Fischbein.◀

People

SEP 22 1997

Shakur
Booty



Shakur
Booty

Here's a new growth industry: [illegible]

...claim his death, at least five suits have been brought against his estate, the most recent by a woman in [illegible] Calif., [illegible] a personal injury suit claiming he was beaten up by Shakur and friends hours before the rap star was killed. [illegible] Jewett, Middle [illegible] immediately filed back with a wrongful death lawsuit against [illegible] Lolita [illegible], mother, [illegible] was named of Shakur's

Anderson

...major recordings from Death Row Records, and settled a claim that the estate owed the company more than $7 million. An Arkansas woman's award of $16.6 million after being shot and paralyzed at a Shakur concert, is being appealed. Even Shakur's father is suing for a cut. The price for the most bizarre suit, however, goes to anti-rap warrior C. DeLores Tucker, who claims that lewd remarks made about her on Shakur's album All Eyez On Me caused her so much distress she said her husband have not been able to have sex. She wants $10 million.

TW 00033

0541g.R1 Payolit TW 00034

PEOPLE By BELINDA LUSCOMBE

Guess Who Else Is Coming to Dinner?

trying to turn her life around, wrapped last week. She has no new work lined up, but she's optimistic. After all, her dad probably still has a copy of that tape. If that doesn't bring new offers, "the record company said I could always come back."

Shakur Booty

Rap's new gossip industry versus MARIA Hamilton. In the year since Shakur's death, at least five suits have been brought against his estate, the most recent by a woman in her 20s. Last week Orlando Anderson filed a paternity suit that claimed he was beaten up by Shakur and friends hours before the rap star was killed. Shakur's lawyer, Richard Fletcher, has unfailingly fired back with a wrongful-death lawsuit against Anderson. Earlier, Shakur's mother filed was control of Shakur's

Women Who Used To Run with O.J.

She's not sure about those murders in Brentwood but PAULA BARBIERI thinks O.J. Simpson is guilty of one thing—being a very bad boyfriend. Not that Barbieri's choice in menfolk is all that shrewd. In her new book, The Other Woman, she reveals that on the night of the murders she was on a date in Las Vegas with Michael Bolton. She had previously lived with Dolph Lundgren and hung out with Roman Polanski and George Hamilton. Barbieri, who says her support of Simpson during the criminal trial led to the loss of all her money, her career and her apartment (although she reportedly got $3 million for the book, which should ease the sting a tad), now claims O.J. was a liar—especially about other women—but that she still loves him. In another new book, I'm Not Dancing Anymore, O.J.'s niece Tenn Baker expresses her own doubts about O.J.'s innocence. She also writes that he wasn't such a great uncle either.

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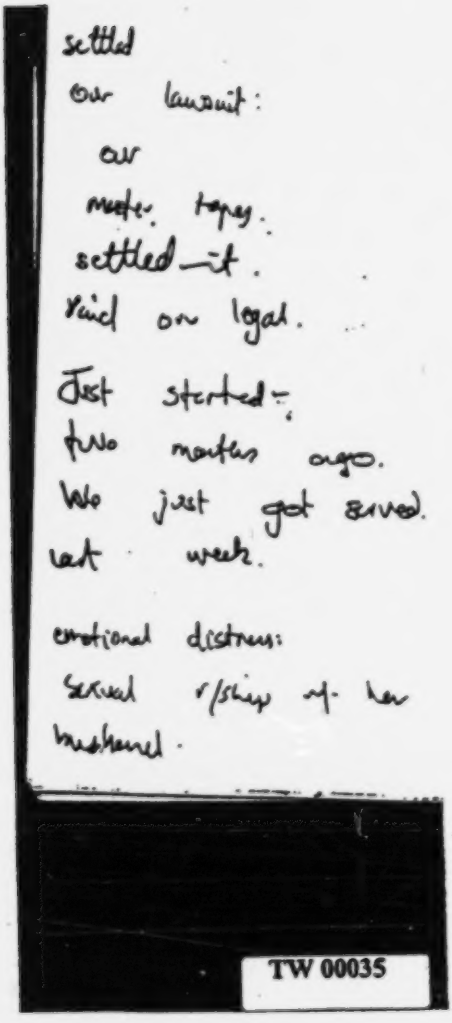
murder soundtrack from Death Row Records, and settled a claim that the estate owed the company more than $7 million. An Arkansas woman's award of $10.8 million after being shot and paralyzed at a Shakur concert is being appealed. Even Shakur's labor is suing for a cut. The price for the most bizarre sale, however, goes to rap-rap warrior C. DeLores Tucker, who claims that [illegible] Shakur's ghost. All [illegible] wants her to [illegible] $10 million.

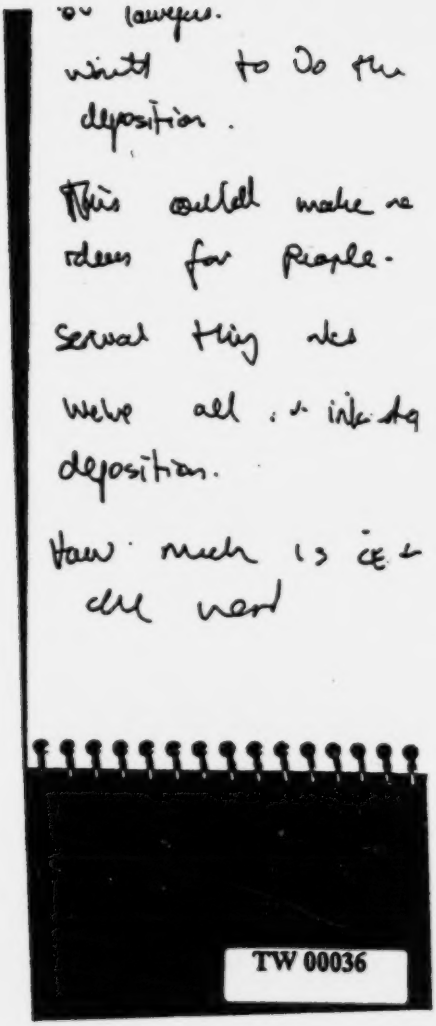
BEST AVAILABLE COPY

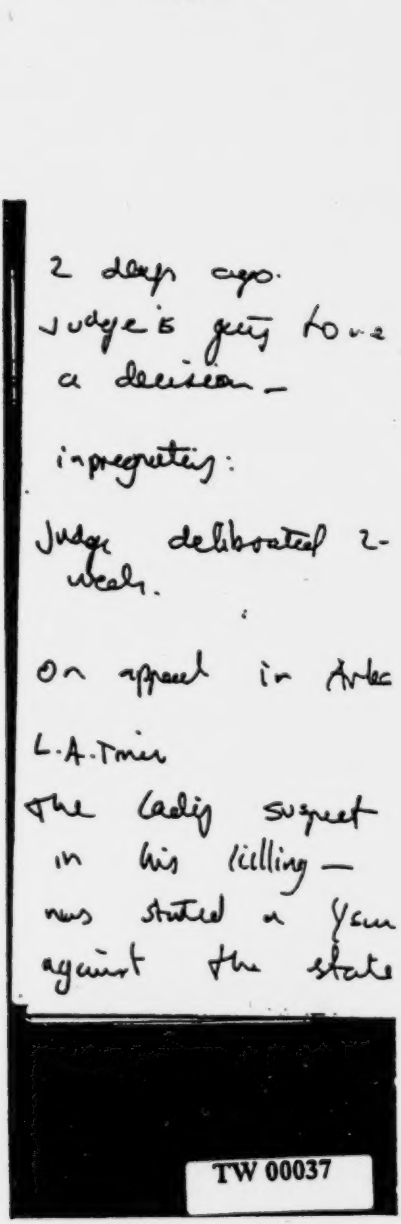

settled
our lawsuit:
our
mother. to pay.
settled it.
filed on legal.

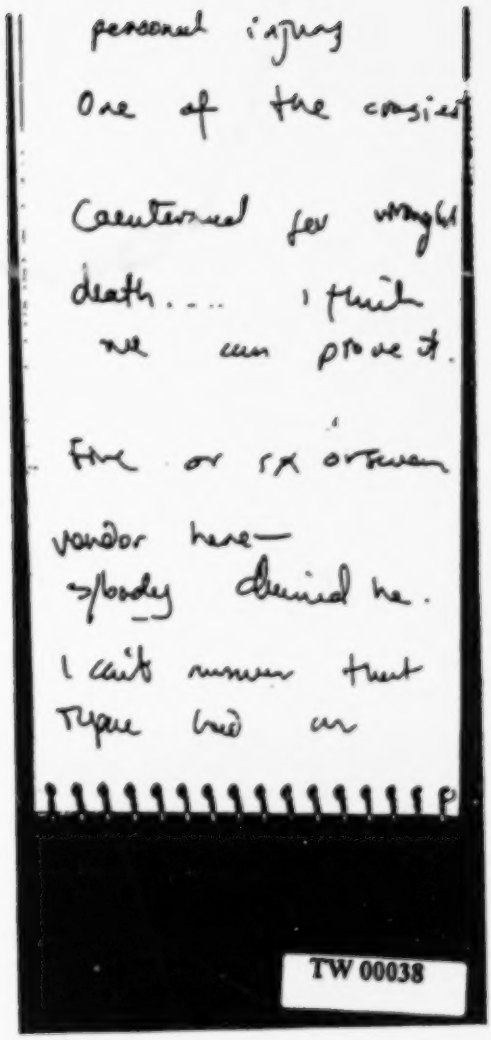
Just started:
two months ago.
We just got served.
last week.

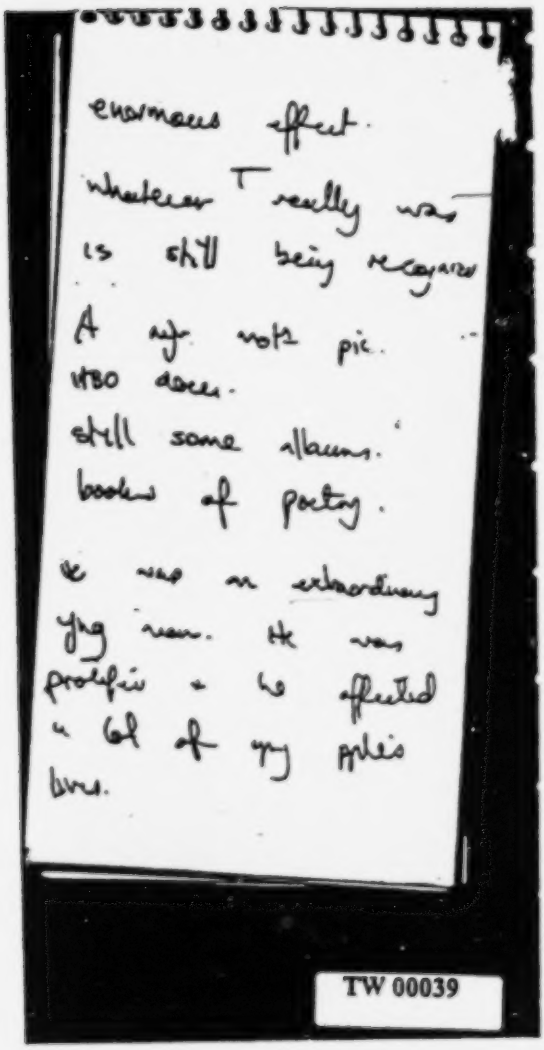
emotional distress:
Sexual r/ship of her
husband.

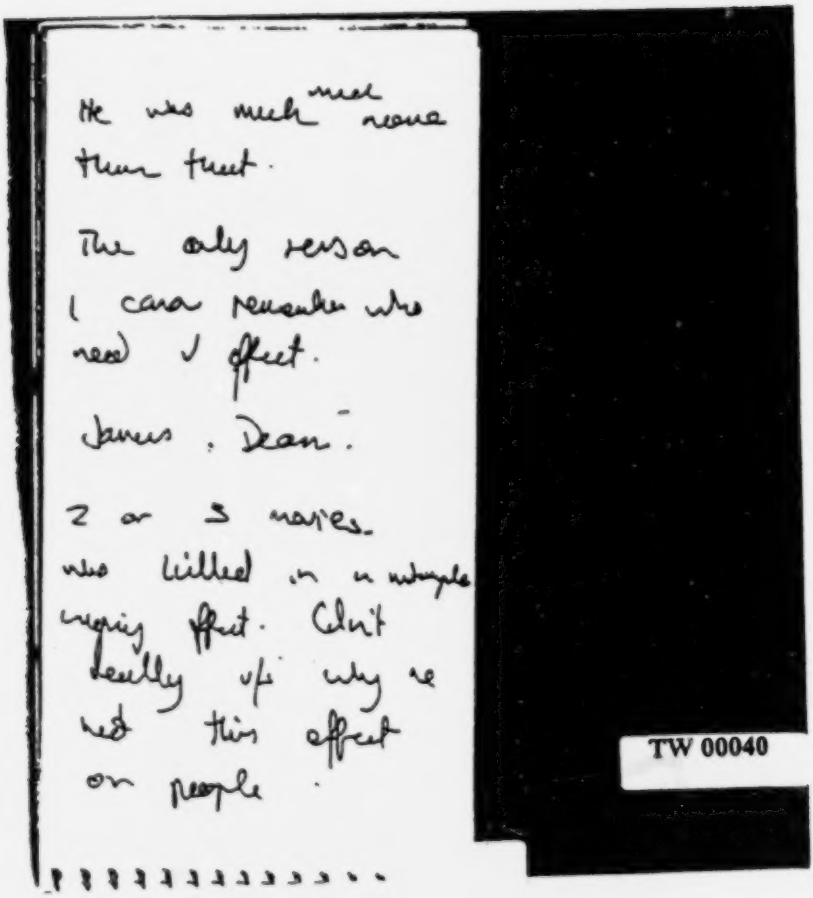
TW 00035


ov lawyers.
wants to do the
deposition.
This could make us
clean for people.
Sexual thing she
We've all . . into the
deposition.
How much is CE &
dll need
TW 00036


2 days ago.
Judge is going to make a decision –
in progress:
Judge deliberated 2 weeks.
On appeal in Arbc
L.A. Times
The Cadiz suspect in his killing – was stuttered a Yemen against the state
TW 00037


personal injury
One of the cousins
Caucasian for wrongful
death.... I think
we can prove it.
Five or six witnesses
vendor here—
allegedly denied me.
I can't remember that
Tupac had an
TW 00038


enormous effect.
whatever really was
is still being recovered
A wife wrote pic.
HBO doco.
still some albums.
books of poetry.
He was an extraordinary
young man. He was
prolific + he affected
a lot of my fellow
lives.
TW 00039



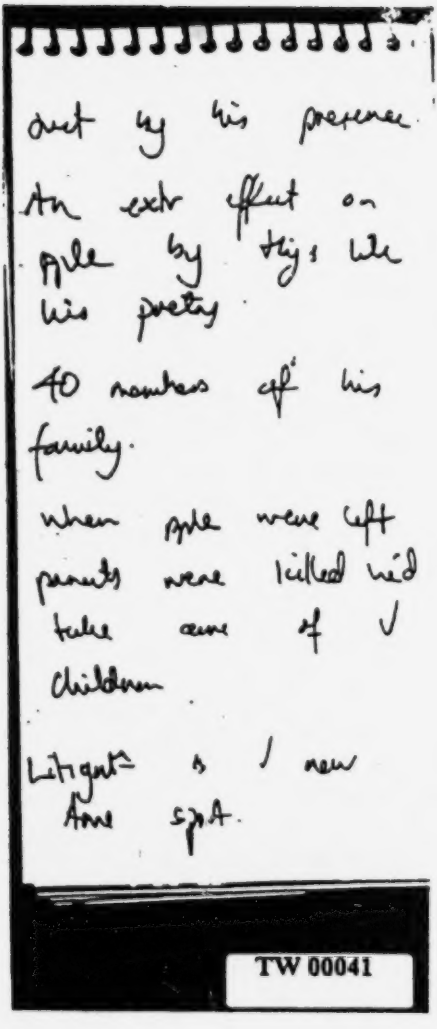
He was much more real than most.

The only person I can remember who used V effect.

James Dean.

2 or 3 more.
who killed in a simple crying effect. Don't really know why we need this effect on people.

TW 00040



duct by his presence.

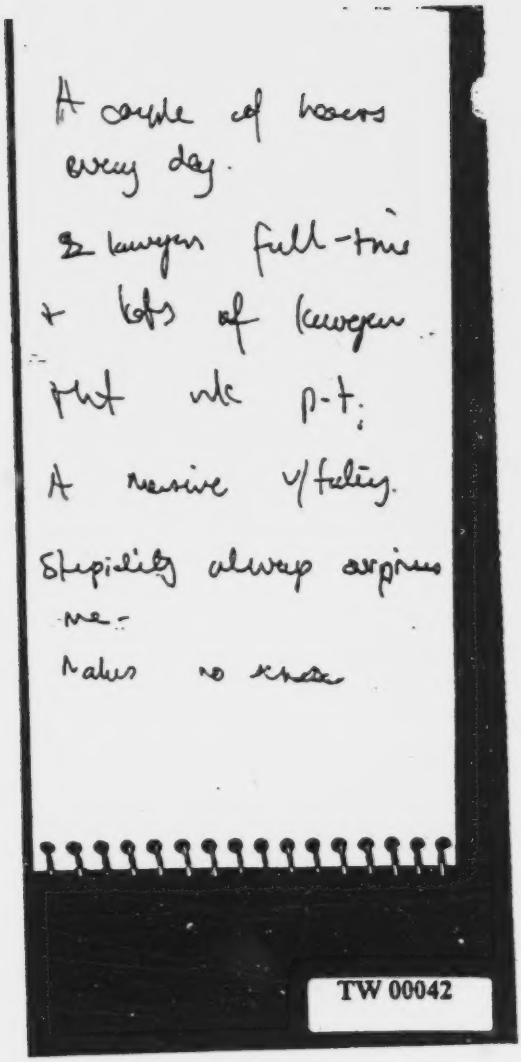
An extr effect on
pple by hijs like
his poetry

40 members off his
family.

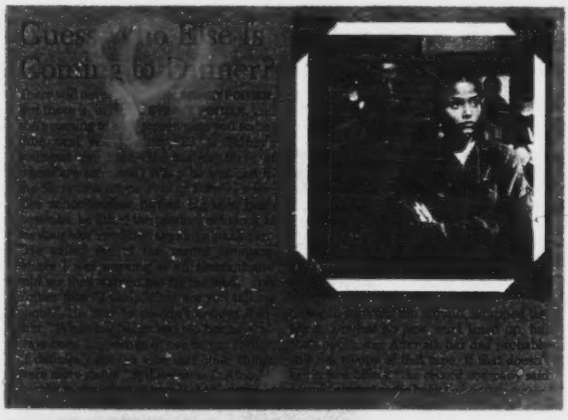
when pple were left
parents were killed and
take care of
children

Litigat= is / new
Aone sysA.

TW 00041


A couple of hours
every day.
2 lawyers full-time
+ lots of lawyers
that we p-t.
A massive w/feeling.
Stupidity always surprises
me -
Makes no sense
TW 00042

By BELINDA LUSCOMBE



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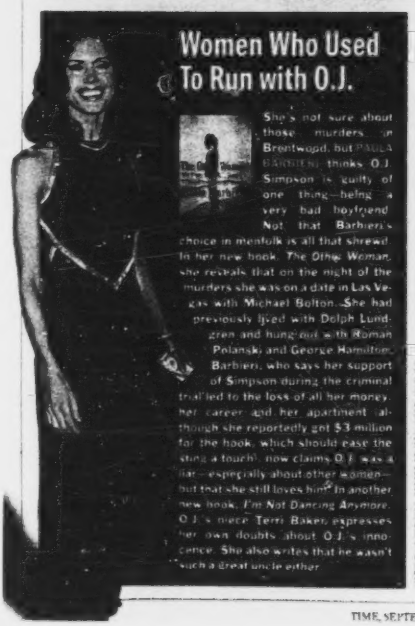

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION
NO. 97-CV-4717
C. DELORES TUCKER and
WILLIAM TUCKER, her husband
vs
RICHARD FISCHBEIN as Co-Administrator
and AFENI SHAKUR as Co-Administratrix
of the Estate of TUPAC SHAKUR

Videotape deposition of RICHARD C. ANGINO, ESQUIRE, taken at the offices of ANGINO & ROVNER, P.C., 4503 North Front Street, Harrisburg, Pennsylvania, on Wednesday, July 22, 1998, at 9:52 a.m., before Julie M. Zanaras, a Federally Approved Reporter, Registered Professional Reporter, CSR and Notary Public.

ZANARAS REPORTING
REGISTERED PROFESSIONAL REPORTERS
1710-12 Locust Street
Philadelphia, Pennsylvania 19103
(215) 790-7857

drafted, do you know?

A. I'm sure they were drafted by Jim Schultz.

Q. Did you discuss with Mr. Schultz how that allegation should be drafted?

A. No.

Q. Did you make available to him any draft Complaints that he could use?

A. See, what you're saying is do I make available. The office has a form Complaint, the office has hundreds of Complaints where that claim is available.

Q. Would you expect that a young law, clerk who's being asked to draft a Complaint on loss of consortium, would go to some place in your law office and consult a prior Complaint that contains such an allegation and use that language?

A. Absolutely.

Q. And so do you understand that that's what happened here?

A. Sure.

Q. When you make a claim for loss of consortium, do you generally use these words, loss of advice, companionship and consortium?

A. I can't honestly say.

Q. Okay.

A. You've got 300 plus Complaints there, and you'll see the type of language used.

Q. What, in your understanding of the terms, does the term consortium add to the terms advice and companionship?

A. Frankly, what the word consortium adds that it is just another term which means you are entitled to get all of the things, and I think I used with your particular reporter, the family union concept. When you damage one spouse, you damage the other spouse in each and every way. And so consortium is like an all encompassing word that you use even when you use other particular things, this means just in case there's something we missed. This includes everything, you know.

Q. Consortium includes everything about the marital relationship?

A. Everything about the marital relationship.

Q. And one of the things that it includes is sexual relations?

A. It can include sexual relations, yes.

Q. Take a look, if you would, please, at Exhibit Number-12. It's a series of dictionary definitions, which I think you've seen before. The first definition, Mr. Angino, is from Black's Law Dictionary. Do you have a copy of Black's Law Dictionary in your law office here in Harrisburg?

A. I'm sure we have several of them.

Q. Would you agree with me that Black's Law Dictionary is the standard text used by lawyers in the United States for definition of legal terms?

A. Absolutely.

Q. And you became familiar with that law dictionary in law school?

A. Probably.

Q. Do you accept the definition that is contained in the 1990 edition of Black's Law Dictionary, for the term consortium as follows: "Conjugal fellowship of husband and wife, and the right of each to the company, society, co-operation, affection, and aid of the other in every conjugal relation. Loss of 'consortium' consists of several elements, encompassing not only material services but such intangibles as society, guidance, companionship, and sexual relations."

I'll stop there. Do you accept that definition?

A. Certainly. You're talking to somebody that over my lifetime, probably has filed thousands of Complaints and tried hundreds of cases.

Q. And the next definition that appears in this exhibit, I believe, is a definition from Merriam-Webster's Collegiate Dictionary, Tenth Edition.

A. Right.

Q. And the definition of consortium in that dictionary, the relevant definition which is the third one, is "The legal right of one spouse to the company, affection and assistance of and to sexual relations with the other."

Do you accept that definition?

A. Yes.

Q. And the third definition that is in this exhibit is from the American Heritage Dictionary of the English Language, Third Edition. And the definition is a little hard to read, I confess, in this particular copy, but it appears to read as follows—and this again, is the second definition and it's—I'm sorry, third definition. "The right

of a spouse to the company of, help of, affection of, and sexual relations with his or her mate."

Do you accept that definition of the legal term of consortium?

A. Yes.

Q. Do you have dictionaries in your office, other than Black's Law Dictionary?

A. Certainly.

Q. Do you have—what dictionaries do you have, do you know?

A. Well, the one that I've been referring to is one that is sitting at the desk across from my office, which is, I think, Webster's Ninth version. I think you're using Merriam-Webster's Tenth. In response to Mr. Donald David, the reason we use the Ninth, is it's the one that's there.

Q. And that is the dictionary that you say is across from your office?

A. Yes. When you came in, when you checked in with the receptionist there, if you had looked behind her desk, there's a dictionary sitting right there. And whenever I want a dictionary, I walk across the hall, I pick the dictionary up.

Q. If you want to look up a legal term, would you first consult

Webster's dictionary or a Black's Law Dictionary?

A. Well, I didn't want a legal term, because we were suing Newsweek and Time, and I didn't expect that they would know about Black's Dictionary. I suspected that people like Johnnie Roberts and Belinda Luscombe would know to look at a regular dictionary. And that's what I was attempting to do there. And what I did was to say, look, here's the situation, if you don't know what the word consortium means, you should consult a dictionary. Now, if a lay person were to do that, what would that person find. So what I did was I walked across the hall, picked up the dictionary, and that's what I found.

Q. So the first time that you looked up the word consortium in connection with any of these proceedings was when you were contemplating a lawsuit against Time and Newsweek?

A. No. I think when I did that was when we were getting the misrepresentation, the distortion of the word consortium. That's when I went to look at the dictionary.

Q. When was that?

A. That would have been in August of 1997.

Q. And what did you do after you looked it up in Webster's dictionary?

A. It eventually became a part of one of my Amended Complaints.

Q. The first time you made any use of that definition was when you had an Amended Complaint drafted, right?

A. Right. Where it appeared. In fact, one of the things Donald David I think brought out, was the fact that—I think it may have been even the Second Amended Complaint, whichever one refers to the dictionary is when I looked at the dictionary.

Q. Well, okay. So in other words—I guess I misstated this before. The first time that you looked up the term consortium in the dictionary, was not when you prepared the Complaint against Time and Newsweek, but when you prepared the Amended Complaint against MTS, Interscope and Mr. Fischbein as executor of the estate?

A. That's correct. That's correct.

Q. And that would have been right after the Newsweek article came out, right?

A. It would have been whenever it appeared. It could have

been after the Newsweek. I mean, I'm not going to say that it did or didn't, but it may have been after the—I was totally frustrated, because I talked to Johnnie Roberts—and you're right, it would have been after the Newsweek.

Q. That's all I need to know right now.

Now, I haven't had a chance to go over these Complaints that you produced this morning, but I guess you've produced a number of Complaints in which you or other lawyers in your law firm have made allegations pertaining to a loss of consortium.

A. The most important would be my own. I brought a lawsuit where my wife's one of the individuals in it.

MR. DAVID: I don't think there's a question pending.

MR. ANGINO: Okay.

MR. DAVID: Just to remind everybody.

BY MR. BAINE:

Q. But the—is this a claim that you add as a matter of routine, when one spouse has been injured physically?

A. Yes.

Q. So your law office routinely adds a loss of consortium claim,

whenever one spouse has received a physical injury?

A. Absolutely.

Q. For example, if there's an automobile accident, and one spouse suffers a broken leg,you'll add a loss of consortium claim automatically?

A. Automatically. You—you trip on a carpet and you injure your toe, it may involve a loss of consortium claim.

Q. And what is it that you understand you can recover through a loss of consortium claim?

A. Through a loss of consortium claim, you can recover the fact that the husband now has to do the dishes, whereas he didn't do the dishes before. He can—you can recover for the fact that the wife now has to mow the lawn when her husband used to mow the lawn. You can recover for the fact that the husband, who used to do the plumbing, now the wife has to do the plumbing. You recover for the aspect of everything that one person used to do that the other person may do now or, you know, how their life has been affected by this. It's a very common part of every claim that we have in our office. I mean, you know, a situation is that one spouse is injured and the

other spouse is affected.

Q. In this particular case, when the claim loss of advice, society—I have the wrong words here, just a second. The loss of advice, companionship and consortium was made on behalf of Mr. Tucker, I take it that you were not alleging that Mrs. Tucker was no longer performing services, such as washing the dishes, cutting the lawn, actual services like that. That wasn't involved in this case?

A. Well, it was. Because the whole thing about it is that the word consortium was there for each and every element wherein Mr. Tucker was suffering. It's Mr. Tucker's claim. He's saying because my wife has been affected, she's not as pleasant as she used to be. She's irritable now. Basically, I have to perhaps go and do something. I mean, I'm just giving you all the things that can occur in—

Q. I'm not asking what could possibly occur. I'm asking you, in this particular case, what kinds of injuries the Complaint contemplated. And I take it that you were not aware then, and you're not aware now, of any injury of the sort that I've described, namely, that Mrs. Tucker wasn't doing the dishes or wasn't doing the lawn or

wasn't actually doing chores.

A. The purpose of the consortium count was to cover everything that—every way in which Mr. Tucker was affected, every way.

Q. And at that point, you didn't know exactly how?

A. Absolutely not. Just as we don't know in many Complaints that are filed. That's why it is a common count, because if you don't make it, it's lost. It's what's called a derivative count. If your statute of limitations go by, and you haven't filed that consortium count, the spouse has lost his or her claim for anything.

Q. I understand. And in this particular case, Mr. Angino, I take it that because you had not spoken to Mr. Tucker directly about exactly what the injuries were, you used the term, it was all encompassing?

A. Absolutely.

Q. And you didn't know at that time, whether or not ultimately, it would turn out to be the case, that one of the things that you could recover some money for, was that perhaps Mrs. Tucker wasn't

performing certain chores?

A. That's right.

Q. You didn't know that that wasn't the case, and you didn't know that that was the case?

A. That's right.

Q. And the same thing would be true, for example, if we were talking about loss of sexual relations. At that point, you didn't know whether that was the case or whether that wasn't the case?

A. That's absolutely correct.

Q. And that was something that you were going to explore on your own with Mr. Tucker as the case progressed?

A. Absolutely.

Q. And at some point, you would make a decision about whether or not ultimately to go before a jury and say, part of what we want recovery for here is for loss of sexual relations. You didn't know that yet?

A. That's right.

Q. Before you made that determination, you would have had to talk to Mr. Tucker?

A. That's right.

Q. And until you talked to Mr. Tucker, you wouldn't be in a

position to say that he was or was not claiming damages for damage to his sexual relations?

A. That's right.

Q. And when was the first time that you did speak to Mr. Tucker about precisely what kinds of damages you might ultimately pursue through this loss of consortium claim?

A. We never discussed the kinds of claims that we would be pursuing. Just the opposite happened. When this Complaint was filed, and the media picked it up, I got a call stating that this had been blown completely out of proportion. And I was asked what should we do, so that it wasn't what is going to be included. There was never an intent for sex to be included.

Q. Who said that?

A. Who said that?

Q. Yes.

A. Mr. and Mrs. Tucker and Paul Waters communicated to me that.

Q. Well, how—did you have a meeting with everybody?

A. A phone call.

Q. Okay. There was a—

A. In fact, I set up a procedure that we were to follow within days of when this happened. I can give you the timetable, because it's very clear in my mind. Saturday night, which was August the 2nd, of 1997, we were having a benefit at my Italian Garden, where we had members of the New York Ballet there for Mid-summer Night's Dream. Paul Waters wasn't able to attend, he was somewhere. His daughter, I think, and son-in-law attended, gave their regrets for the fact that Paul wasn't going to be there.

The next day, I headed to South Carolina to go on a vacation. So we're talking August the 3rd. Somewhere in that August 3rd, August 4th period, I was advised, and I can't—you know, I've been trying to find out exactly how it occurred, but it was a communication from Paul Waters to me, because I hadn't known what had happened. The communication was that somehow they had taken the Complaint, and said something about people not being able to have sex. And this I can remember so clearly, because what I said is look, Mr. and Mrs. Tucker are public figures. They—and I'm saying Mr. and Mrs. Tucker, when really basically Mrs. Tucker is the public

figure, but Mr. Tucker is not, let's say, a person who is not able to communicate.

So what I said to Paul was, in any way, shape or form that they can let the public know that this does not involve sex, we've got to nip it in the bud. And I said if there are any—if there's anybody who wants to talk to me, I will be happy to talk to reporters.

This is something I normally don't do, but I thought it was important in this particular case. You will see from things that have been produced to you there, I actually made phone calls from my South Carolina property. I think on August 4th there were two calls, August 5th, August 8th. I have a recollection of actually talking to somebody on my car phone. The reporter was saying you're on a car phone. I said yes, and we had a discussion.

The purpose of all of these discussions was to say, look, this has nothing to do with sex, and basically, you're misrepresenting the thing. In fact, if you look at one of the things here, you've been using an article—

Q. We're going to get into all of that.

A. But that's how it happened.

Q. I don't mind hearing all this, but I have questions that—

A. Follow your order. But that's what happened. So it was decided almost immediately, to dispel any notion that this case involved sex.

Q. You indicated that you went to South Carolina on August 3rd. As of the time you departed for South Carolina, I take it you had not had any conversation with Mr. Waters, Mr. Tucker or Mrs. Tucker about these news articles?

A. I can't say that. Paul could have called me on Sunday morning before I left.

Q. But you don't remember that?

A. I don't remember. I'm just saying Paul called me. I do remember that, because I remember his voice, and I remember his upsetment at the time, and asking me what should be done. And I had no question in my mind, I told Paul, we've got to nip this in the bud, we have to make it clear that everybody understands, because it—it makes the case frivolous

Q. Okay. And I'm just trying to get the sequence down. I think what you said before is he called you in South Carolina, right?

A. No; no. Didn't say that. I said I talked to Paul. I went to South Carolina. I don't know if he called Sunday morning before I left for South Carolina, or if he talked to me in South Carolina, or that he talked to somebody in the office, and I talked to them. In some way or another, it had to be Paul, because I remembered his voice. So it was an actual conversation with Paul, because I told him—he was concerned and worried as to what we should do. And I told him, make sure that the Tuckers, any oppor—any chance they have, dispel this idea.

Q. You did not speak to the Tuckers yourself?

A. I did not speak to the Tuckers.

Q. Did you ever speak to the Tuckers yourself about the need to dispel this understanding, say up through the end of August?

A. I don't recall speaking to them to dispel the understanding.

Q. Okay. Would it be fair to say that the only conversation that you recall having to the effect that we have to nip this in the bud, we have to tell people that this doesn't concern sex, was the conversation

you had with Mr. Waters on or about August 3rd?

A. That's the one that I clearly remember, yes.

Q. Did he ever report back to you that he had communicated that on to the Tuckers in any fashion?

A. No.

Q. Could you take a look, please, at Exhibit Number-13?

THE VIDEOTAPE TECHNICIAN: Counsel, five minutes left.

MR. BAINE: Okay.

BY MR. BAINE:

Q. Mr. Angino, Exhibit Number-13 is a page from the medical records of William Tucker. It's a memo of Dr. Harold Mignott. It's dated June 12, 1997. I take it you have seen this document in the course of the discovery proceedings in this case?

A. Yes.

Q. In this document, Mr. Mignott records that Mr. Tucker had, among other things, complained of increased stress, because his wife had been harassed. Had said that she is very stressed and that has

had an impact on him. And that he has been investigated and had derogatory information spread about him, which has caused significant amount of stress on his part. And that he has a significant amount of difficulty with impotence.

Did you know back in June, July or August of 1997, that Mr. Tucker had been experiencing difficulty with impotence?

A. No.

Q. If Mr. Tucker had been experiencing difficulty with impotence as a result of the stress that had been placed upon him by the actions that you were complaining about, in the lawsuit that you brought on their behalf, would he be permitted to recover for that—those sexual difficulties in the lawsuit, in your judgment?

A. You're using as a hypothetical question, that he has had stress, and the impotence is the result of the stress, then obviously, you could make a claim for such a thing. If those are—if that's your hypothetical.

Q. And would the way you make such a claim be to allege loss of consortium?

A. You—you would make it, but you probably would use the

factual elements in that particular situation. You would probably, under those circumstances, specifically do what we did with regard to the fear. You know, for instance, in Mrs. Tucker's Complaint, we talked about the fact that she was, you know, fearful for her life. You would probably have used—because in that case you would have specifically known that there was impotence caused by stress. And you would have said, as a result of stress that Mr. Tucker has been under, I mean, I would think.

Q. Let me ask you this question, Mr. Angino. You're a very experienced and creative and successful plaintiff's lawyer.

A. Thank you.

Q. If Mr. Tucker had come to you and said, you know, I think I've been harmed by everything that's gone on here, by these lyrics, by the way this lawsuit is being pursued, I think it has damaged my wife and put stress on her, it has as a result, put stress on me and my relationship with her is not what it used to be, and indeed, because of that, I believe I am suffering difficulty with impotence.

If Mr. Tucker had said those things to you, and I understand

you did not have that conversation with him, but if he had said those things to you, I take it you would have included a claim in the Complaint that would have ultimately permitted you to recover damages for the injury to his sexual relations with his wife, right?

A. If those factual circumstances had occurred, one question I would probably have asked in this, did you ever have the problem before? I mean, that would be an automatic question. You know, for instance, whenever somebody tells me they have a back injury or any injury, I always say, did you ever have this problem before. And from what we know in the facts here, he said he had problems when he was 19 and when he was a kid. So we would not have included that element, because it would diminish the more important aspects of the case.

Q. Well, let me just ask you this question. If you're dealing with the problem of impotence that had not been continuous, but rather had arisen from time to time in periods of increased stress, would not the law permit you to recover on the theory that the plaintiff—that the defendant takes the plaintiff as he finds him, right. And if,

in fact, the plaintiff had some vulnerability to impotence in times of increased stress, and increased stress was placed on him by the defendants in this particular case, you could recover, right, for the impotence?

A. You talk—you—you gave me the credit of 33 years of experience. I would not demean this case by putting it in here. I mean, I'm just being perfectly honest with you. You do not put elements that will hurt your case.

Q. Have you ever filed a claim for loss of consortium that did involve lost sexual relations?

A. By lost, do you mean total loss?

Q. Either total or partial or permanent or temporary?

A. I'm sure somewhere over 33 years, a couple has been affected in some way or another by the accident, you know. So I would have to say yes.

Q. Are there cases in which one—one spouse has been killed and the surviving spouse could claim that—

A. I don't think you get a claim for loss of sexual in that case, but I'm—

Q. Okay. When you have asserted loss of consortium and had

in mind that in this particular case, you wanted to recover for damage to sexual relations, had you spelled that out in the Complaint, or have you just used the term loss of consortium?

A. I'm going to say to you, if we were in State Court, we obviously would have to spell it out, because it's a factual requirement. You know, State practice is factual. Federal is notice pleading.

Q. In Federal Court, would you spell that out or just use loss of consortium?

A. I don't know.

MR. BAINE: Okay. I think we're out of tape. Thank you.

THE VIDEOTAPE TECHNICIAN: Off the video record at 12:00. This is the end of tape one.

(Off the record.)

THE VIDEOTAPE TECHNICIAN: We are back on the video record at 12:10. This is the beginning of tape two. Proceed.

BY MR. BAINE:

Q. Mr. Angino, it was your understanding, was it not, that the idea to include a loss of consortium claim on behalf of Mr. Tucker,

was Mr. Tucker's?

A. It was Mr. Waters who communicated it to me, is that what you're saying?

Q. Was it your understanding that Mr. Tucker had suggested to Mr. Waters that he thought he had a claim, and that he should be included in the suit?

A. All I know is what you know, that there was between one draft and another, include a consortium count for Mr. Tucker.

Q. So you don't—you didn't know, at the time, whether or not the initiative to include Mr. Tucker had come from Mr. Tucker or Mr. Waters?

A. That's correct.

Q. Now, you indicated before that you spoke to Mr. Waters, you believe, on August 3rd or August 4th, maybe in South Carolina, maybe when you were here in Harrisburg, right?

A. Right.

Q. It was a telephone conversation?

A. Right.

Q. When did you return to Pennsylvania from South Carolina?

A. You guys have my calendar. I'm going to guess--

Q. Well, let's look at your calendar, if that going to help you.

A. Yes. The calendar will help me.

Q. I've marked your calendar as Exhibit-43.

A. Okay. Let's look at it.

(Calendar for July, August and September 1997 was marked as Angino-43 for identification.)

THE WITNESS: I'm looking at Angino-43. And you will see it starts with the 5th saying, RCA/aka, that's my wife's—Alice K. Angino. SC means South Carolina.

And it's showing that I had a pre-trial on the 11th of August, so—that was a case I tried on the 20th, so I assume I came back for that pre-trial.

BY MR. BAINE:

Q. So looking at your calendar then, would you conclude that you were in South Carolina from at least the 5th through the 10th?

A. At least the 5th through the 10th.

Q. I worded it that way deliberately. What about the 3rd and

4th?

A. I think I went on the 3rd.

Q. You think you went on the 3rd.

A. I think I went on the 3rd.

Q. Okay. So you would have been out of town that whole week then. And I believe, tell me if I misrecollect this. What you indicated to me before, I think, was that you don't remember talking to Mr. or Mrs. Tucker about this matter any time in August?

A. That's right.

Q. And you don't remember talking to Mr. Waters about it any time, other than this conversation on the 3rd or the 4th?

A. The only one that is clear is that conversation.

Q. Fair enough. Fair enough. In your earlier response, you had said that you said to Mr. Waters, Mr. and Mrs. Tucker are public figures. And then you explained that what you meant with respect to Mr. Tucker was that he, at least, did have access to the channels of communication; is that right?

A. Yes. Being—being married to Mrs. Tucker is what I'm referring to.

Q. In other words, you—you—you knew that the press would take an interest in this lawsuit, and that they would continue to take an interest in this lawsuit?

A. You're using the word—no, I would suspect that they would.

Q. Expect?

A. Expect. Expect would be a better word, yes. But I have to say that when I filed the Complaint, I didn't alert anybody that I was filing a Complaint.

Q. It—it got attention on its own, given who these people were and given the nature of the claim, right?

A. It did.

Q. And in retrospect, it's not really surprising, given the figures involved in both sides of the case, right?

A. That's right.

Q. I want to go through some additional exhibits. Exhibit-14 and Exhibit-15 are two Associated Press stories, dated August 1, 1997. I just want to ask you whether you recall seeing these stories at the time that they came out?

A. No. The only story I remember seeing was that one that appeared in the Philadelphia—and that was given to me, rather than anything else. That one there. That's the only one I think I saw.

Q. You're referring to Exhibit-16.

MR. BAINE: Let's show Mr. Angino Number-16.

THE WITNESS: My recollection is that Exhibit-16 got to me through Paul Waters in some way. That's my recollection.

BY MR. BAINE:

Q. You don't think you saw it then on August 2nd, the date that it was published.

A. No.

Q. Sometime later?

A. No.

Q. Would you have seen it sometime within the next couple of days or some period of weeks thereafter?

A. I'm going to guess. I don't think it was sent to me down in South Carolina where I was.

Q. So you think you saw it sometime after you returned from South Carolina?

A. That would be my guess.

Q. But you don't have a recollection of exactly how Mr. Waters got this to you?

A. No. I can say under oath that the only thing I knew about this was what Paul Waters transmitted by way of that telephone call.

Q. Did he refer in that telephone call to any specific news article?

A. I don't think so. He may have said the Philadelphia, but I mean, you know—again, I don't know.

Q. Did you know as of August 3rd or 4th when this conversation took place, that Mrs. Tucker had been in the hospital?

A. You know, I don't think I did know that she was in the hospital.

Q. So then you—you would not have known what has been testified to in previous depositions, about Mrs. Tucker's being in the hospital, being shown an article, having some kind of relapse. You didn't know about that at that time?

A. I didn't know about that, I think, up until relatively recently. I would say more as part of this discovery process, rather than before.

Q. Up until, let's say September 1st, 1997, which would have

been after the Newsweek article, how many times had you met face-to-face with Mr. or Mrs. Tucker?

A. I'm going to guess a couple.

Q. Would it be fair to say that you really did not have—strike that.

Would it be fair to say that—that Mr. Waters was the person who had a long-standing relationship with the Tuckers, and that you, yourself, didn't know them very well at that point?

A. I would say you're accurate.

Q. Was it your understanding that Mr. Waters was a—was a close personal friend of the Tuckers?

A. Yes. I said that on the record.

Q. But you knew that back then?

A. Certainly. I knew from the time they first came in that the relationship went back to college, when Mr. Waters and Mr. Tucker went to college together.

Q. Let me ask you to look at a couple of other exhibits that we've marked. Exhibit-17 is an article in the Philadelphia Daily News, dated August 6th, 1997. This would have been published

during the period of time that you were in South Carolina. Do you remember seeing this article at any time prior to the time that—that it was used as an exhibit in these proceedings?

A. No.

Q. Same thing with Exhibit-18. This is an article in The Philadelphia Tribune, dated August 5th, 1997. Did you ever see that article prior to the time that it was marked as an exhibit in these proceedings?

A. No. The interesting thing about it though, it talks about trying, I think, to call me. And you'll see there were two calls that I returned to them.

Q. Well, now you're talking about Exhibit-18?

A. I think so. Philadelphia Tribune. I called The Philadelphia Tribune two times on August the 4th.

Q. From South Carolina?

A. From South Carolina.

Q. Did you talk to anybody?

A. I spoke to someone in the news room. I don't know who it was. And that's where I found it a little upsetting is, I see the article

now says they tried to reach me.

Q. Okay. You're referring to a document that you produced in discovery, a memo to the Tucker file and RCA?

A. Right.

Q. Dated July 13th, 1998.

A. Right.

Q. Okay. You've produced that memo to us actually, in two forms, one with some handwriting on it, one without handwriting on it. Let me mark these as an exhibit.

MR. BAINE: Let's give these Exhibit Number-44.

(Two pages of Memo to Tucker File and RCA dated July 13, 1998 was marked as Angino-44 for identification.)

BY MR. BAINE:

Q. Mr. Angino, did you prepare an Exhibit Number-44 on or about July 13th, 1998?

A. A paralegal from our office prepared it.

Q. And did she prepare it by reviewing your telephone records?

A. Yes.

Q. And then did you help her figure out who the people were who were being called?

A. I asked her to call each of these entities and talk to them. So the notes you see are her notes.

Q. The handwritten notes that are on the second page of this exhibit are her notes?

A. They're her notes. The typewritten portion is hers, too. This is almost a document totally generated by a paralegal.

Q. And did you ask her to generate this document?

A. Yes.

Q. What instructions did you give her?

A. I said contact—once we had the phone numbers of—I think my wife Alice got the phone numbers from our South Carolina residence, and we gave her the phone numbers, and I said call these numbers, find out who they are. We didn't even know who they were, first of all.

Q. All right. Okay.

A. And once you find out who they are, here was the instructions. Number one, do they have a record of the call. Number two,

did they make any notes of the phone call. Number three, did they—did it generate an article. And we asked them to get me who—whom I talked to, what I said, and what was the article.

Q. Okay. So, for example, the second item, which is Philadelphia Tribune, indicates that you made two phone calls to the Tribune on August 4th, at 12:30 and 4:06—

A. Right.

Q. —one minute and four minutes.

A. Right.

Q. And then the name of Irv Randolph appears here.

A. I suspect that Gwen, who is the paralegal, talked to Irv Randolph, who's the editor, and said that I spoke to someone in the news room.

Q. Your paralegal said that?

A. Yes.

Q. Was she able to confirm who it was you spoke to?

A. You—you see what it is. You spoke to someone in news room. It doesn't say who that someone was.

Q. Did Irv Randolph confirm that?

A. Yes. Because I mean, he—

Q. Or—or—or was that just your paralegal writing that down that was what she figured, that you must have spoken to someone, but she didn't know who?

A. Well, my understanding of my paralegal is what she is meaning here is she talked to Irv Randolph, and he said I spoke to someone in the news room.

Q. And—and the notes on the side say 7/16 call tomorrow, 7/17 left detailed message may be—

A. May be off site.

Q. Maybe something off site. Maybe archives off site?

A. Archived outside yes.

Q. In other words, there may be some record of a call in archives—

A. Right.

Q. —off site, that's how you understand that?

A. Right. I wanted to get everything that I could.

Q. Do you have a recollection of speaking to someone at The Philadelphia Tribune?

A. I remember during the first week speaking to a number of people. Specifically Philadelphia Tribune, no.

Q. Okay. Do you have a recollection of speaking to anybody at WWDB?

A. Specifically, no.

Q. Do you have a recollection of speaking to anybody at the Billboard Bulletin?

A. A little bit of a recollection of this Carolyn Herwitz—Horwitz. I mean, you know—the woman, you know—some conversations stick out more than others, and I have some recollection. It looks like it was a nine minute conversation, so that we probably—but if you ask me what did you say specifically with her during that nine minutes—

Q. I just asked whether you had any recollection of talking to her?

A. Okay. All right.

Q. And—and you do remember talking to Carolyn Horwitz?

A. I think so.

Q. How does the name Carolyn Horwitz get on this piece of

paper? Is that some name that you gave to your paralegal or is that something—

A. No. She would have gotten that. The reason that I do have some recollection is, this used to be an old Jewish firm. It was called Hurwitz Klein, Benjamin and—Hurwitz, Klein, Myers and Benjamin. So Hurwitz—and the spelling of that was H-u-r-w-i-t-z, was the senior of this law firm. So Hurwitz—

Q. You mean Angino & Rovner?

A. Yeah. What's now Angino & Rovner really goes back to 1928 as the Hurwitz firm.

Q. Okay. All right. The notation here says Carolyn, I guess, received faxed copy of article attached. Looks like someone at the Bulletin faxed your paralegal a copy of an article, right?

A. Right. And you have it.

Q. Okay. And the notation next to WWDB says per Chad Wilkinson, tapes are discarded after three months. They have nothing on the interview, I guess is what it says. So in other words, they were not able to confirm that you talked to anybody, right?

A. Right.

Q. Does the name Chad Wilkinson mean anything to you?

A. No.

Q. Moving down to the Philadelphia Weekly, there's a notation that Tim Whitaker is finding and faxing something. Did—did Tim Whitaker find and fax something to you?

A. I think—yeah, I think you got the two articles that I produced for you today. They were two editorials that they did.

Q. Produced today?

A. They were circulated when we started this morning.

Q. Okay. I don't think I saw them before. We'll look at them in a second.

A. You know, I'm producing things as I'm getting them, you know.

Q. Okay. But you don't know to whom you spoke at the Philadelphia Weekly?

A. No.

Q. Okay. The Philadelphia—you indicated earlier that you thought that The Philadelphia Tribune article made some reference there to being unable to reach you.

A. Right.

Q. Is that in—can you show me where that is?

A. All right.

Q. I guess up here it says on page 3, maybe this helps. "C. DeLores Tucker's Harrisburg attorney Richard C. Angino did not return calls yesterday."

A. Yes.

Q. Do you see that?

A. Right. obviously yesterday was the 4th, which is when I returned two calls. Didn't make any sense.

Q. It would seem highly likely, would you agree, that although you placed two phone calls, it doesn't look like you had a substantive conversation.

A. Well, one of them was four minutes, I think.

Q. That's right. One minute and four minutes.

A. That sounds like a substantive conversation to me.

Q. But you don't—you don't have a recollection of it?

A. I mean, I—I'm sure I talked to people. I was trying to dispel

this sex business, so ...

Q. That's not what I said. But you don't have a recollection of talking to someone at The Philadelphia Tribune?

A. No.

Q. Did you ever see the press release that was issued by—on behalf of Mrs. Tucker's organization on August 21st, 1997, which we've marked as Exhibit-19?

A. I can't honestly say if I did, when I did or the circumstances of it.

Q. Okay.

MR. BAINE: Let—let's show the exhibit to the witness for a second. Nineteen.

THE WITNESS: It would be along the lines of what I asked them to do.

BY MR. BAINE:

Q. Do you have that? Okay. Do you see the second to the last paragraph on the first page, where there's a statement about the media jumping on "the so-called sex part in the suit"—

A. Yes.

Q. —"that called attention to loss of consortium." And then it says, "Which was put in there by my husband, Bill, not by me, she added, obviously nettled."

A. Right.

Q. That seems to me to be something that you would probably remember reading, if you had read it at the time. Do you remember reading it back in August of '97?

A. I'm pretty sure I didn't read it in August of '97.

Q. Did you have any understanding, recognizing you hadn't—that you didn't speak to Mrs. Tucker in August, did you have any understanding, at any time, that Mrs. Tucker was at all annoyed or nettled or bothered by the fact that this loss of consortium claim had been put in the Complaint?

A. Mrs. Tucker was upset at what the media did, and they used to do what they did, to loss of consortium count. So if you follow that logic, if that count hadn't been there, they wouldn't have done whatever it is they did. You know, I'm thinking, logic, lay person, what does a lay person say. Look, this media is talking about sex. How

in the heck did they come up with this particular thing. And everybody is asking her about consortium. And this is a lay person responding to him. I didn't even have anything to do with this consortium count. My husband put it in, you know.

Q. But—but did you understand that that—did you understand back in August and September that that was her feeling, that she was annoyed that it had ever been included in the first place?

A. She was annoyed at anything that was in that Complaint that could have given the media a kernel to misrepresent what they did.

Q. And at some point, did she ever have a conversation with you about why anybody ever put that in there?

A. No. She never—never said that.

Q. Did—to your knowledge, did she have a conversation to that effect with Mr. Waters?

A. How would I know?

Q. He could have told you.

A. I don't know.

Q. And you don't know whether she had a conversation to that effect with her husband?

A. I don't know that. I can honestly tell you that up until this moment, we've never talked about their private lives in any way, shape or form.

Q. And Exhibit-20, Mr. Angino, is a—a series of articles, all of which have been marked in one way or another before. I'll just represent to you that these articles run from August 1st through August 17th, 1997, and they all report on the allegations of the Complaint. And my question really is whether you had seen any of these before. I understood you to say a moment ago, that the only story you remember seeing in August of '97 was the Philadelphia Daily News story. And so I take it from that, that you really don't remember, at the time, seeing any of these other stories?

A. You've answered your question.

Q. Now, up until the time that you spoke to Mr. Roberts—we're going to talk about that in a second. Before that, are you able to identify any reporters that you recall speaking to about this lawsuit?

A. Can't identify by name. I recall the conversation with Mrs. Horwitz or Ms. Horwitz or whatever she would be. And I recall

another conversation with another woman reporter, that occurred from my car phone, because the woman specifically said are you calling me from a car phone. And I said yes, I want to talk to you about this. And I think it was—my recollection and another similarly lengthy kind of conversation that—so the two that I have specific recollection of is Ms. Horwitz and the one from the car phone. Those are the two.

But I can assure you, there were, at least, I would say, somewhere between six and ten or 12 conversations, as best I can guess it, during this time period. The ones that I have a record of because we called out, and I may have gotten other calls where they called in, you know, and I don't have a record of. What we're attempting to do now is to—we're about to start a lawsuit, and part of the discovery process is going to be to try to get the records of everybody who wrote these articles here, to find out if they talked to me.

Q. Okay. But Exhibit-44, which contains some notations concerning calls to four different media outlets, those are the calls that you made from your South Carolina residence to the press, as far as

you know?

A. As far as I know.

Q. Do you have any comparable list of calls that you made from your Harrisburg office or your home or your car phone?

A. You have whatever we have. And the only thing that seems to show up there is the calls to Johnnie Roberts' office.

Q. That wasn't my question. You did produce a number of other telephone records, and I take it you've reviewed those, and you're not able to identify any other phone calls to reporters on the other records you produced?

A. Right.

Q. And you don't have any other records?

A. The phone—the phone records we're trying to get from the car. Incredibly, these car phone records are archived somewhere, and we're having trouble getting them.

Q. So you're trying to get your car phone records, but unless and until those records show up, the only records that you have of phone calls to reporters, would be the Johnnie Roberts calls, and the four that are referred to in Exhibit-44?

A. As best as I—we have been able to discover at this point in time. You know, I'm saying that, because I haven't personally called all the numbers that are there, but I'm assuming that if there was some kind of station or some kind of newspaper, my paralegal would have brought that to my attention. She prepared the chronology that you have there, and it indicates all of our activity.

Q. And you—I don't think you've produced any home telephone records, and I take it it's because that doesn't reflect any conversations with reporters?

A. If it did, you would have had them.

Q. All right. If we could look at Exhibit Number-21. And that is a set of telephone records. And from what I can tell, Mr. Angino, it would appear that there are two references on this document on page 1, to phone calls to Mr. Roberts at Newsweek. The first is under the first heading—

A. Is it on page 1?

Q. Yes. August 20, 5:12 p.m., looks like 36 seconds. Do you see that?

A. Help me here.

Q. First page of the exhibit, Exhibit-21, third item. Item

number 3.

A. To New York?

Q. Yes.

A. 8/20. Okay. I got you.

Q. Thirty-six seconds, right?

A. Yes.

Q. And then item number 10.

A. To New York?

Q. Fifty-four seconds?

A. Right.

Q. These would appear to be calls that you returned to Mr. Roberts in Newsweek, right?

A. That's correct.

Q. And you did speak to Mr. Roberts at some point on August 20th, right?

A. That's correct.

Q. Mr. Roberts' phone records, which previously have been marked, and they're marked as Exhibit-22 as well, indicate that he had phone conversations with you placed by him at 3:42 and 5:24. And the 5:24 conversation appears to have been the substantive conversation with you. That's your understanding?

A. That's correct. I was on trial that week, so I suspect that 3:42

would have not been to me.

Q. Now, you received a phone message from your secretary that Mr. Roberts was trying to reach you, right?

A. Right.

Q. And did you know why he was trying to reach you?

A. Yes. It said something about writing a story and a deadline for the story.

Q. And when you spoke to Mr. Roberts finally on the phone, could you tell me in sequence what you remember of that conversation?

A. Yes, I think I can. I'm going to use for assistance, his notes and my things so that we'll—

Q. Well, first, can you do it just by recollection, without reading from notes? And then go—

A. Probably not, because what I do remember is that the first part of the conversation dealt with the constitution. I had present at that time, this defamation and invasion of privacy, which you can see was underlined by me. I also had the Falwell Opinions, which had

different yellow stickers and things and my underlining, because I knew from prior conversations that I had had with other reporters, one of the things that was being discussed was the justification of saying what was said by Tupac Shakur. So when I talked to him, that constituted the first part of our discussion.

Q. Do you remember how the conversation began? And—and—and Mr. Angino, I want to make clear that when I ask those questions, I'm not asking you to try to figure out what might have happened. When I ask you whether you remember, I really first want to know what you recall. And later on, we can talk about how you logically fill in the gaps in your recollection. But do you have a recollection of how the conversation began?

A. Yes.

Q. Okay. How did it begin?

A. The conversation began, and we're all tuned in when you're a lawyer, to understanding who's on the other side. I could tell from voice that it sounded like an African/American talking to me. Secondly, I recall that the discussion was justifying what Tupac Shakur had done. And there was a specific mention of the Falwell Opinion,

by Johnnie Roberts, whereby he was referring—I think he may have used the word Flynt or whatever the name was or something like that who brought the action. But he was attempting, in the early part of our conversation, to justify Tupac Shakur doing what he did. And as a lawyer always prepares for conversations, I had the Flynt Opinion in front of me, plus I had—and Jim DeCinti was the person who got this outline together for me for that conversation.

Q. Well, is your testimony, Mr. Angino, that you correctly anticipated that Mr. Roberts was going to raise the Falwell Opinion, and that you had the opinion given to you and highlighted and underlined, and then, to and behold, Mr. Roberts actually raised the very opinion that you had before you?

A. Absolutely. Absolutely. In fact, I had the Complaint as well.

Q. Now, how did the conversation get to this issue of justification for what Mr. Shakur had done? Did you raise it or did he?

A. He did.

Q. How did he raise it?

A. He raised it. And I will not obviously remember the exact words, but he was saying—he said, I have the Complaint, so I got from him that he saw the Complaint that I had filed, and that we were communicating with regard to the Complaint, and whether or not it had a legal basis. And he mentioned specifically the Flynt Opinion, and I had the Flynt Opinion, and I had it underlined. And you see the stickers that are on these things, that was all done in preparation, because I mean, I don't talk to Newsweek reporters every day. You know, I'm a little lawyer in Harrisburg, Pennsylvania. And basically, this is a reporter calling me from Newsweek Magazine, and he wants to talk to me about this Tucker case. And so basically, you know, I'm impressed. And I'm going to be prepared. You can see that the conversation is occurring sometime after 5:00. I was on trial on—with the Valora case, and we run, generally, when we're on trial until 4:00 or 4:30.

So I came back to the office, and got together the items that I felt might come up. The Complaint would be one thing, the summary was another. thing, the Flynt Opinion was something else.

I had spread out just—this is the way I do things. Do you see

the desk we're looking at now? I have things spread out, that's exactly the way in which this conversation took place. And it took place down in my office, which is directly below here, and it took place—I was at a table whereby the different papers were spread out in front of me. And just as you occasionally are prepared for witnesses who are going to testify in trials and prepared for them, I was prepared for him. And when he started to talk about the Flynt Opinion, and the fact that my case didn't have merit, that they can do whatever they want to do, I'm a lawyer and I was saying, well, here's what Flynt says here and, you know, the reason for that is not the reason for this. So the initial part of our conversation dealt with that. And that I clearly remember without looking at anything else. My recollection is—

Q. Before we go on, you referred to a couple of documents. I'd like to mark them as exhibits. First, you've referred to a copy of the Flynt Opinion. You've given me two copies of this opinion this morning, one that has no notations, and the other one which is underlined. I take it the one you have in front of you is the one that had underlining on it; is that right?

A. The one that—I had them both.

Q. You had them both? You had a clean copy and—

MR. KASTENBERG: Those aren't duplicates. One is the Fourth—

MR. BAINE: One is Fourth Circuit, on is Supreme Court, okay.

BY MR. BAINE:

Q. You had them both, Fourth Circuit and Supreme Court?

A. Yes. I had both of these Opinions. And you will see they both have little yellow stickers.

Q. Have you made copies of your little yellow stickers for us?

A. I don't think we made copies of your little yellow stickers. They were the way in which I do things.

Q. May I see what they say?

A. I guess so. Don't remove them, because I asked my secretary to not disturb anything, because that's the way they were.

Q. Maybe what we could do is, I would like to ask you to read

into the record what the notes are on the yellow stickers on both these exhibits, in part because I don't have them, and in part because I can't read them. But if you could just, for example, say the Fourth Circuit Opinion on page 1, I've got two notes that say the following, that would be helpful, and we can get through it in a couple of minutes.

MR. BAINE: Let me—let's mark these as—as an exhibit to this deposition. It would be Exhibit Number-45. I'm marking both of them. Supreme Court first, Fourth Circuit second, both as part of 45.

(Supreme Court Opinion and Fourth Circuit Opinion was marked as Angino-45 for identification.)

THE WITNESS: You are challenging me to read my handwriting.

BY MR. BAINE:

Q. Do the best that you can. If you can't read it, that's fine.

A. The first looks—this is on page 8 of the Fourth Circuit. The first word appears to be false. The second looks like disclosures. The next appears to be damage to rep. Down below that is jury verdict,

hurt feeling, emotional harm, physical harm.

Page 9, public office sue, false, reckless disregard. The word one. I assume Falwell one below or something like that.

Page 11, intentional lie—I can't read my next handwriting here. That's all that's marked on that. And looking at the Opinion, nothing is underlined in the Opinion.

Q. Okay. Now, let's turn to the Supreme Court Opinion.

A. Supreme Court Opinion starts with underlining, which you have. I—I assume—

Q. Yes. Don't—don't mention that. Just read to me what's on your yellow stickers and tell me what page they're affixed to.

A. Okay. Page 3, parody, not to be taken seriously. Jury, no reasonable person takes seriously. Actual malice, false, no intent to harm more spread loss from money.

Page 6, vulgar, offensive—can't make out the next word—untrue, act, malice. Just words. Those are what the stickers state.

Q. Okay. All right. When did you do all of the underlining and

make all the notations on these two cases?

A. My recollection is that I did that before I would have talked to Johnnie Roberts. I'm not going to say I did it that day, but sometime between the time when we started to get these phone calls, and they'd always mentioned—they didn't always—different phone calls would bring up the Flynt Opinion. So I eventually said I should have, you know, in order to answer questions about—I had never read the Flynt Opinion before that. If you—if you look at it, it says "For Educational Use Only." This would have indicated that I had asked Jim Schultz, who was a student at that time, to get me copies of these particular cases. And only students, I guess, can do this kind of thing. And I don't know if I'm violating another rule or something by obviously using this. But I had gotten it at that time, and these were items that I had in front of me when I talked to Johnnie Roberts.

Q. So you're inferring from the fact that it says For Educational Use Only, that your law clerk used his identification number to get on to West Law to get these Opinions for you?

A. I wouldn't even know how that's done, but I'm assuming

that's the way it happens.

Q. All right. And to the best of your recollection, you're telling me that you had had conversations with reporters prior to your conversation with Johnnie Roberts, in which reporters had raised with you the meaning of this Falwell case, and suggested to you that that indicated—that case indicated Tupac Shakur had a right to say whatever he wanted in his lyrics?

A. Right.

Q. And so you actually were led to these—to these cases by reporters?

A. Right.

Q. And that Johnnie Roberts was one of a number of reporters who raised this case with you?

A. Absolutely.

Q. But not the first?

A. Not the first.

Q. Had there been several who had raised it before him?

A. I would think there would have been more than one or else, you know, why would I have wanted to make sure I had this when I talked to Johnnie Roberts, you know. And you know, I just said that,

but really what it amounts to is we have a liability file in all cases, and in that file I stick things such as this. So that basically, when I'm talking to him, I have a liability file, which gives me information like this. And when we talked, that's one of the—the first subject of the conversation.

Q. Okay. Just hold on for one second, I want to look something up.

Mr. Angino, obviously, these conversations didn't occur yesterday. You've testified you had a number of conversations with reporters, and I want to ask you whether or not it's possible that your recollection that you discussed the Falwell case with Mr. Roberts might be mistaken, and that you might have had those conversations with others, not with him. And in answering that question, I ask you to consider what you know to be Mr. Roberts' testimony, that he doesn't remember that part of the conversation at all. Do you think it's possible that, in fact, you discussed the Falwell case with some reporters, but not with him in that conversation?

A. Absolutely not. And I have not used that type of language before. That is something that I am positive of.

Q. And are you also positive that you—that there was a discussion of the Falwell case in the subsequent radio interview that you did with Mr. Roberts and others?

A. The radio interview involved the propriety of Tupac Shakur's verbiage, and it involved a give and take with me and somebody I think they brought from a college or something, not—didn't seem to be a lawyer, but seemed to be an individual who may be a history professor or a government professor or something like that. And the situation was that the reporter wanted us to talk about the propriety of it. And I remember the other individual didn't seem to know much about the constitution, and didn't know much about Falwell. And when it came to Johnnie Roberts, he says I don't know anything about the constitution.

Q. But I believe that you indicated earlier on, I think it was at Mr. Roberts, deposition, that you recall that Mr. Roberts did offer opinions about the Falwell case and the constitutionality and the constitutional protection that Mr. Shakur had, early on in the conversation, but then when you became involved, he said he didn't,

really wasn't an expert on the constitution?

A. No. He did not say a single word in that radio interview about the constitution. You are misunderstanding that with the discussion I had with him, which to me was so clear. Here's a guy arguing with me on a phone conversation about the constitution and Falwell, and then we're on the radio, and he suddenly no longer says he knows anything about the constitution. And that's his—the sum and substance of his words were, at almost the end of this give and take back and forth, I don't—I'm not a constitutional expert, I think was his—if you have it there, I think it may say I'm not a—

Q. I'm just looking at what you asked Mr. Roberts at his deposition where you made certain representations.

A. But I mean, if you have the radio thing, I think you would find that his part was, after we went through this, he says I am not a constitutional expert. That's my recollection. And I've—I've never got the transcript, but if you look at it, I think you'll find it will say something along those lines. I have a very good memory.

MR. DAVID: You modestly said that.

Sorry, it was an inappropriate comment, I apologize.

BY MR. BAINE:

Q. I'll look at this transcript a little bit later. I can't find what I was looking for. This is the transcript of the Roberts' deposition.

And what was it that Mr. Roberts said in his conversation with you about the Falwell case?

A. I would be less than candid if I could give you his words. But the essence of them was that the Falwell Supreme Court Opinion would justify Tupac Shakur doing what he did.

Q. And you engaged in a discussion with him about whether that was the case, and you disagreed with him?

A. I think we probably spent at least three or four minutes on that aspect.

Q. And—and how did Mr. Roberts introduce that subject of Tupac Shakur's right to say what he said. I mean, did he begin the conversation with—by challenging you as to the merits of your lawsuit?

A. You know that isn't the way a conversation would start. The

conversation would start by his saying, I am, and he would identify himself. And he probably had already done that, because you can see from some of the other things, we'd been playing telephone tag, and when I finally got to him, he says call me—you know, I'll call you on my nickel, that kind of thing. And he eventually did call me on his nickel, so to speak.

So by that time, we may or may not have introduced ourselves, in terms of who we are, but we obviously knew who we were, in some way, after what usually occurs in conversations. And the thing that I remember is here's this guy wanting to argue with me, about the fact that what I had filed, is not going to be sustained because there's a Supreme Court Falwell decision. Like, you know, a lawyer talking to a reporter and the reporter in effect debating with me the constitutionality of my action, or the appropriateness of my action. Those are things that stick out in your mind. And that was the first part of the conversation and none of it appears in Johnnie Roberts' notes.

Q. Let me—let me—let me read to you the testimony that you elicited from Mr. Roberts at page 139 and 140 of his deposition.

A. Okay.

Q. And you're asking him about the conversation that he had with you.

"Question: Was not the first subject of the conversation the constitutionality and the protection of the First Amendment with respect to what Tupac had done? Was that not the first topic of the conversation?

"Answer: Not that I remember.

"Question: Did you not reference the Falwell case as being a basis upon which Tupac Shakur could do what he did? Did you not do that?

"Answer: Certainly not.

"Question: Did you not discuss with me the Falwell case?

"Answer: Certainly not.

"Question: Did I not point out the differences between the Falwell case and what Tupac Shakur had done?

"Answer: Not to me.

"Question: Did we not, after going through the Falwell case and the constitutionality of what the Supreme Court did in Falwell, talk about whether that is or is not represented or similar to what

happened with Tupac?

"Answer: That wasn't a conversation I had with you."

You remember asking those questions and getting those answers right?

A. Yes.

Q. And you watched—you had the opportunity to watch Mr. Roberts as he delivered those answers. Is it your belief that Mr. Roberts was lying when he gave those answers?

A. I think Mr. Roberts did not remember that we discussed it. I don't think he was lying.

Q. Okay.

A. I can honestly tell you that I've looked at people and witnesses for 33 years. He did not appear to be lying. But what I sensed in the way he was answering was, maybe I did, and maybe this guy knows something that I don't remember. So I would say rather than lying, I think that was not part of what to him was important, so he did not type that into his records. And let's give the man the benefit of the doubt, that he interviews a lot of sources every day, whereas I only talk to Newsweek once in a lifetime, you know, so my recollection, I think, is much better than his recollection.

Q. Mr. Angino, I've tried to struggle with the different accounts that you and Mr. Roberts have given of this conversation.

A. That's right.

Q. I do want to ask you more questions about your recollection of it, but you're in the unique position of not only providing us with your recollection, but having had the opportunity to examine Mr. Roberts under oath for some period of time. And I just wanted to ask you this question: Wouldn't you agree with me that everything about the way Mr. Roberts conducted himself and answered those questions, indicates that he was giving you his truthful recollection, whether or not it conformed with yours, whether or not it was mistaken, whether or not he misremembered, but that Mr. Roberts gave every indication of—of giving you truthful answers to your questions?

A. I agree. I—I didn't sense a liar. I sensed somebody that didn't remember.

Q. Well, and this is what I've been asking you about kind of informally, but now I get the chance to do it under oath. You've been

a lawyer for many years, and you have seen time and time again, how different people involved in the same conversation or the same event, come away with the—from the conversation or the event with a different understanding at the time, and then also, remember it differently later on.

And there are some occasions we all know, in litigation, where it's just remarkable that people who have seen and witnessed the same thing or had the same conversation with each other, come away with a completely different understanding of what happened or what was said. And there are other cases where—where we form a belief that, in fact, what happened is one person is just lying about what happened or what was said.

And so my question to you is, don't you think that it is equally possible here, at least equally possible here, that in so far as the conversation between you and Mr. Roberts was concerned, that you and he just had a miscommunication in the sense that you understood one message to be conveyed clearly, and Mr. Roberts understood something else, that that is altogether possible, and at least as possible as the other likelihood, which is that one of you is just flat

out lying about what took place?

A. I can assure you, and you've taken my deposition now for maybe an hour, two and a half hours, when I don't know, it will be on the record that I don't know. I know that I talked to him about the constitution. I know that he told me and tried to justify what Tupac Shakur did by referencing Falwell. I know that as clear as I know that my name is Richard Angino.

Q. But that—but that's not my question. I, for better—

A. That's my answer to your question.

Q. —for purposes of this question—for purposes of this question, I accept that you are firm in your conviction that your account of the conversation is accurate. And I'm not, through this question, trying to get you to admit that your—your account of the conversation is inaccurate. I'm rather exploring something else, and that is whether or not—if you're firm in your conviction that you said and meant certain things, you must be sitting there thinking either that Mr. Roberts has lied about that conversation or that he just didn't understand it, whether because he's not a good listener or because

you think there was some flaw in his ability to understand what you're saying or for whatever reason, that—that he didn't understand what you were saying at various times in the conversation.

It—it's one or the other. If you're absolutely right about your recollection, then either Mr. Roberts has lied, or he didn't understand you, right? Because the three possibilities are that—that you're wrong about the conversation, he's wrong about the conversation, or one of you misremembers or misunderstood or one of you is lying, right? I mean, those are the possibilities here?

A. No. The probability—the probability is that he listened, he heard, it was not germane to his story, he had a deadline for his story, the note to me indicates, I have to talk to you, basically because I have a deadline for this story. The story probably had already been preliminarily thought through, in terms of what he was going to write about. He was going to write about the fact that there were lawsuits being brought against Tupac Shakur, and these lawsuits were frivolous.

When he's talking to me about the constitution, and whether or not Tupac was justified or not justified, that wasn't part of his story.

It's not—when you—when you make notes of something, you make notes of things that are germane to what you're going to be talking about. To him—

Q. So on that—so in that—in that part—I don't want to interrupt you, but in that part of the conversation you think the probability is that he just doesn't remember something took place?

A. That's right. And I'm sure that's what it is.

Q. Because he didn't strike you as the kind of guy who makes things up and lies. He's a pretty straightforward, reputable and—and—and accomplished journalist, right?

A. I—I would agree. I mean, I—I think it wasn't what his story was going to be about, so he didn't record it.

Q. And in fact, Mr. Roberts is not, by background or by assignment at—at Newsweek, he is not a gossip reporter or a personality reporter, but rather a business reporter, right? And that's what his—that's what his beat is, and those are the kinds of stories he writes, right?

A. I can assure you, that Mr. Roberts came into our conversa-

tion with a story that he already wanted to write. And no matter what I said—no matter what I said, he was still going to write that same story. And I'm looking you right now in the eye, because when I was done with that conversation, I knew he wasn't going to do or say what I was telling him. I mean, you've talked to people and you know you've talked to them, and you know you've explained the thing, and you know they are going to go and do something different than what you said. And that's—we used the word lie. I don't think when he testified in his deposition that he was lying. But I can assure you that on August the 20th, he wasn't going to give the appropriate account of this story that I gave him. I can assure you of that.

Q. I understand. I understand that you felt that he was not going to write this up the way you wanted it to be written up?

A. Absolutely. Absolutely.

Q. Okay. And that could be for one of several reasons. It could be because he knew full well what the facts are, and just intended to write something contrary, or that he wasn't understanding what you were saying, or that you weren't being successful in communi-

cating what you were saying.

But my question with that as a preliminary is simply this, you've heard Mr. Roberts testify that his understanding of what was being said on the subject of the loss of consortium claim, was that you were trying to expand his focus and get him to see that there was much, much more to this case, which he did not understand to be a statement that sex had nothing to do with it, but rather what—what he understood to mean that look, you've got to see the bigger picture, and there's much more to this, and—and implicitly in acknowledgment that it did involve sex. Now, when he gave that explanation, did it strike you that he was giving that explanation in complete bad faith, or that that's what he actually understood when he had the conversation with you?

A. I told him—

Q. I'm not asking what you told him. I'm asking what your impression is now. Have you taken his deposition of what he really understood or maybe misunderstood?

A. I'm—I'm—I'm trying to answer your question.

Q. Okay. Go ahead.

A. Can I answer it?

Q. Yes.

A. I said do you have a copy of the Complaint. He says I do. I said would you turn to paragraph 50. I—I specifically said would you turn to paragraph 50. Would you read what's in paragraph 50. I say how many paragraphs are there in this Complaint. My recollection is 66 paragraphs. I said, you guys, and I was lumping him in with every other reporter, and I was frustrated by this time, because you're talking to people, you're trying to tell that this thing has nothing to do about sex, but they want to write about sex. I mean, there was no question in my mind as I talked to him, I said read those words. I said consortium can mean, in some cases, sex. I said most of the time it doesn't, and it doesn't in this case. And I'm looking at every one of you, when I had that conversation, I knew before it was ever going to be published that it was going to talk about sex. I could—I walked out of my office that day, and I don't remember who it was, but I said I just got off the phone with this guy from Newsweek. And I said it's like talking to the wall. No matter what I told him about this thing not involving sex, he wants to write about

sex, and I said he's going to write about sex.

Q. Now, Mr. Angino, Mr. Roberts' notes, which we've marked as Exhibit-23, do you have them in front of you?

A. I sure do. And I find them extremely interesting.

Q. All right. Okay. Let's go through them. He says when you filed a Complaint we just got timetables from the Eastern District, number of things came up. Two trials going on. Lawsuit where Interscope and Death Row brought suit against Dr. Tucker, just at the opening stage of my suit. That's all the kind of thing you said, I take it?

A. Yeah, sure.

Q. I think Dr. Tucker is one of the most respected—

A. Could I just stop you for a second—

Q. Yeah, sure.

A. —because I mean, I think it requires—you can see I was trying to show him the Complaint. We were talking about these suits in California in 1995, and basically, they were brought against Interscope and Death—I was trying to give him the background of

the whole Complaint. And basically saying this is what's come about from all of this.

Q. And he was asking you specifically about the lawsuit you had filed in the Eastern District of Pennsylvania, right?

A. Right.

Q. And then the notes say, I think Dr. Tucker is one of the most respected—I presume this means individuals in the African/American community. And she doesn't take light to any of this. I take it you said that?

A. Yes.

Q. And it says, if you look at the Complaint, it has all different allegations?

A. There's exactly what I said.

Q. All right.

A. I'm telling them, look at this Complaint.

Q. It's got a lot of stuff in it?

A. That's right.

Q. You say there's one count of loss of companionship. It's ignoring the other counts. In other words, I take it—

A. And you see—excuse me.

Q. —was that a response to the articles that had been published elsewhere?

A. Yes.

Q. That everyone else has been ignoring all the other counts and just focusing only on this one claim?

A. That's right.

Q Right?

A. And I wouldn't—I wouldn't have used companionship, that's his interpretation.

Q. Okay. His loss of consortium is what you're talking about, right?

A. Of course, sure.

Q. And then you say, we're talking about all of this affecting Tucker. If someone affects you physically, mental, et cetera, they've affected the family union. You were talking about that because he was asking to you explain loss of consortium, right?

A. Yes. And look what he's—

Q. Is that right?

A. Yeah. And look what he's left out.

Q. Okay. What?

A. In most litigation—

Q. Well, we haven't gotten there yet.

A. Okay.

Q. In most litigation there is—and let—and let's—let's assume that what is left out is in most litigation of this type, there is claim for loss for consortium?

A. And that's what I told him.

Q. All right. Well, you don't have to type that out in order to remember that's what's meant, right?

A. Right.

Q. So in most cases of it—not in most cases in general, right, but in most cases of this type—

A. Most personal injury type cases.

Q. —most cases of this type, kind of cases you're involved in, there's a claim for loss of consortium—

A. Right.

Q. —it can include sex, it's probably one of the less significant aspects in relations. So in other words, what you were saying to him is, loss of consortium is the kind of claim that you see in all sorts of cases. It can include sex, but that's probably one of the less significant

aspects of it, right?

A. Right.

Q. That's what you were saying to?

A. Right.

Q. Now, don't you think it's possible when that Mr. Roberts hears you give that explanation of consortium, that what he is understanding is oh, I understand what Mr. Angino's saying, it's one of the less significant things. It's there, but it's not the biggest part of the case. And if that's what he came away with the impression about—I mean, because that's what he's told you, that's what he understood.

A. It—it—it blows my mind though. What it means is every personal injury case, you could say—my own lawsuit, somebody hits me from behind, and I got a back injury, and my wife has a loss of consortium count. Tomorrow the Newsweek Magazine says Richard Angino, prominent lawyer in Harrisburg, brings a lawsuit because he and his wife have not been able to have sex since—I mean, don't you think that's bizarre?

Q. Well, Mr. Angino, I'm not asking you whether you think that a lawyer who has knowledge of all of your cases would reach that

conclusion. I'm just asking you, don't you think it's possible that this reporter, who's not a lawyer, who's never filed a count of loss of consortium in his life, who hears you give the explanation that look, in most litigation, there is this kind of claim, it can include sex, but that's one of the less significant aspects of it, could come away with the impression that oh, okay, it's one of the less significant aspects, but it's part of it. And that—and that he could be confused about what maybe you meant. Isn't that possible?

A. I can't—I can't see it. I mean—

Q. You don't—you don't think it's—you don't think it's the reasonable or correct understanding of what you said, but—but—but you've had a chance to look at Johnnie Roberts and size him up and see what kind of guy he is. Given what you can tell, isn't it possible that that's what he understood you to be saying?

A. No.

Q. Maybe misunderstood?

A. No. Johnnie Roberts wanted to write about sex. And if it doesn't involve sex, it's not worth writing about. It's the same as a dog

biting a person. I mean, it is not interesting.

Q. Did he—did he—did he strike you as the kind of guy who writes those kinds of stories?

A. He struck me that he was going to do it here. I—I didn't know Johnnie Roberts at the time.

Q. But I mean, after taking his deposition, and now that you know the kind of work he's done.

A. I'll tell you what he's—

Q. He worked for the Wall Street Journal, business publications, he's recruited to write business stories, and he was involved in this because of the business aspect of it. And he would have had a story about all the lawsuits against the Shakur estate, whether one of them had to do with sex or not. And this is not a cub reporter who is trying to put his name on the front page of the New York Times and make a reputation for himself. His job and reputation was secure regardless of whether or not this had any reference to sex. So why do you think he threw this in, unless that's what he thought it was about?

A. Was that an opening or a closing?

Q. Yeah. No, why do you think he threw it in, unless he thought that's what it was about?

A. Today, the media is motivated to publish—they're motivated to publish things that people want to read. People want to read that some ridiculous case involves a prominent woman, who because she had heard lewd lyrics, has not able to have sex with her life. Does that make any sense? Does that make any sense?

Q. Well, let me ask you this question, Mr. Angino. We have the notes, which I've just read to you on this subject. And you have testified, as I understand it, and you have written memos explaining what you intended to be saying to Mr. Roberts was that yes, it can include sex, but that's not what we're talking about here. What he has in his notes is, it can include sex, it's probably one of the less significant aspects in relations.

Do you think it's possible that you did not use the exact words in that conversation to Mr. Roberts, that the claim in this particular case doesn't have anything to do with sex, that you meant that, that you maybe even thought that you said those exact words or something like those words, but that maybe you didn't actually say it. Isn't

that—is that possible?

A. The words I used, the tenor of what I said, was this is not a case where lewd lyrics had any effect upon Mrs. Tucker's sex life. The language was not intended for that purpose. And I'm telling you, and I am a person who will never, ever say anything under oath or otherwise, that I don't firmly believe, I knew he wasn't going to listen to me. And you can ask your questions and try to do what you do and just as you did—

Q. Well, let me just ask you this question then, Mr. Angino. Do you recall what words you used—what precise words you used, to convey to Mr. Roberts, the idea that this case did not involve sex at all?

A. My best recollection is that I told him that virtually all cases that I get involved in have consortium counts. Consortium counts basically—and I—I used examples, I really did. I told him the things you asked me, they can mean simple things like a wife or a husband being irritable, or the fact that, you know, they're not as nice as they used to be, or the fact that someone no longer takes out the grass for

you or the garbage for you or does these things. I said only in the rarest of cases would you have a count that actually involves sex. I'm under oath, so I cannot say to you that I said specifically, this case does not involve sex. But my recollection was everything I said the same thing. You know—

Q. I understand. That—that—that your—your—you don't remember the words that you used. You can't say that you did say this case does not involve sex. You can't remember that you used words that conveyed that exact meaning, but that it—but that was your intent, that's your recollection of what you were trying to get across?

A. And just as I said before—

Q. Is that fair?

A. —I was convinced that he was ignoring it all and was going to write—because he—he kept being defensive. But can't it—you know, can't you interpret consortium this way. It was like can't you interpret—I mean, can't you interpret the—something a certain way.

Q. Did—did he say that or are you—

A. Yes.

Q. He said can't you—he said can't you interpret—

A. Yes, something like—something along those lines. Can't it be—can't consortium be interpreted as meaning sex. You know—

Q. At this point, Mr. Angino, you had no idea whether or not the lyrics and other actions about which you had complained had, in fact, had an impact on the Tuckers' sex life. You just didn't know that at this point, did you?

A. No. No, I really didn't.

Q. And you weren't prepared to make a statement to Mr. Roberts that they did not have an effect on the Tuckers' sex life, because you didn't know, right?

A. Ah. Now, there you're wrong. The conversation that Paul and I had, specifically stated that we were going to—whether it did or didn't involve sex, we were going to tell the media that it didn't involve sex, because that was the whole idea. Even if there were some involvement in sex, it would minimize, it would frivolize, it would make this whole thing cheapened. So with—whether it did or didn't involve sex wasn't important. We were going to basically

not pursue any claim for sex, no matter how you could interpret the words.

Q. That wasn't the—that wasn't the gist of the statement that Mr. Tucker made to two Philadelphia publications in early August, was it?

A. Well, you—you have those publications.

Q Right.

A. And I think the gist of it is what they say. And they start out with media mischaracterizes Complaint.

Q. The gist of those statements is that something like this can—can affect everything, including sex life, and that damage to sex life was only a small part of the case. But the gist of those statements was not that damage to sex life has nothing to do with this case, was it?

A. Let me just—

Q. Was it?

A. The gist of things is not something that a witness can answer. What the gist of something—the gist of it was that the media mischaracterized these complaints, that's the gist of it.

Q. I used the word because you used the word gist. But—

A. The gist is that—

Q. —we've gone over this—we've gone over this before, and you've seen the statements that Mr. Tucker made. And what Mr. Tucker said in reference to the claim that is the damage to sex life, was that was just a small part of the case. And when he asked—

A. And that—and that was one sentence in the whole thing. The heading. You've ignored the heading. The heading says—

Q. He said that. He was quoted as saying that, right?

A. Yes, but—

Q. And—and that—that statement, that—that—that a claim of damage to sex life was just a small part of the case, is an acknowledgment that it's a part of the case, right?

A. Let us—let us even concede for your purpose, that if a media could interpret it as a small part of a case, you are not permitted under libel laws, to say that it has destroyed their sexual relations. You are not permitted to distort the Complaint in such a way. You

are not permitted to do what was done here, which is libel.

Q. Have you had an opportunity to go over the rest of Mr. Roberts' notes of your conversation with him?

A. Yes. And I could fill in all the blanks that he has left blank.

Q. Okay. Why don't you go through them and fill in the blanks?

A. All right.

Q. This is Exhibit-23.

A. All right. First of all, you've heard me testify for probably almost three hours. I hope I'm able to speak in sentences, and I hope that my answers to your questions are understandable.

If you look at this, this does not sound like Richard Angino talking. Eleven days of deposition, a national investigative firm, gangsta background. These are the kind of units on the other side music. Okay.

Now, that does not sound like somebody trying to record what the other person is saying. I can tell you what he meant by these things. Eleven days—

Q. Just—just tell us what you said.

A. Okay. First of all, what I told him is what was in the Complaint. I told him that Death Row, Interscope and the other defendants mentioned in the lawsuits were trying to shut up Mrs. Tucker. The way they were trying to shut up Mrs. Tucker was, first of all, by bringing the two rap suits in Calif—slap suits or—slap suits I guess they're called, in California. Secondly, what they attempted to do is to put her through 11 days of depositions. Thirdly, they hired this investigation firm that went throughout the country and looked up everything that they could find, to see if there's a slightest bit of dirt anywhere in her life and her husband's life.

So when you see 11 days of deposition, you see a national investigative firm, you see this. Gangster background probably and, you know, I'm just talking his two words there, would have involved the fact that Death Row has a gangster background. I mean, everybody there admits to the fact that they are proud of the fact that they are gangsters, that they spent time in jail and did different things. And so what it is, is Mrs. Tucker is afraid for her life because, first of all, these people are trying to shut her up in the ways they've been

trying to shut her up, and there's gangsters involved there, so she fears for her life. And that is why it appears in the Complaint.

These are the kinds of—and it says units, but these are the types of defendants or people who are on the other side. So I explained to him that the purpose of this Complaint is to fight back at what they had been doing to her for the last two years. There's just the word music. Now, I don't know what the word music in and of itself would mean, and I don't know how Johnnie Roberts can take the word music and make anything sensible about it. One thing that disturbs me is—

Q. Mr. Angino, you've taken notes of lots of conversation in your life, right? Sometimes you write a word down, and then you figure there is nothing worth writing there, and I'm going to stop writing there?

A. All I'm saying, big gaps. I mean, there's wording, and then there's big gap. There's 11 days, there's big gap. Call MS Tucker, and he names a MF, and this is your wife. I remembered that. I didn't know whether Johnnie Roberts was or wasn't married at the time.

But what I said to him, I said—and I usually address people by their last names, Mr. Roberts, let me give you an example. This is your wife. And basically, there is this gangster group, and they're trying to shut you up. And they put out this record, and they call your wife a—and I don't use profanity, so I would have probably said an MF or something like that, you know. And I said, how would that make you feel. Well, you know, he wanted to skip past that, how it would make him feel or you know—and that's what I mean. Those were the kind of things, you know. I'm trying to do my best as an advocate, as a lawyer, to persuade someone that this Complaint didn't involve sex. It involves all of these more important things, what Mrs. Tucker calls the gangstas in the suites, the other 11 defendants. And then—I know what we're talking about here. But all he puts down is the end of our discussion.

I talked about Fischbein, and I talked about lawyers like Fischbein, and I talked about red herrings, and I talked about people who basically take something, and they try to find out something that really doesn't even involve in it. We use that term oftentimes in litigation, civil litigation. A defense lawyer will just try to find some

little red herring, or something to talk about. And so what Mr. Fischbein did basically is take this sexual thing and try to trivialize this whole Complaint and make this Complaint into lewd lyrics destroy sex life. Thirteen page Complaint, 66 count, one count being 50 that involves consortium, and what's the response. Can't understand how these lewd lyrics could destroy her sex life. I tried to point out to him that they are being misled.

Q. Mr. Angino, I don't want to interrupt you, but you're—you're kind of going on a—on an explanation of your view of the whole case, and I want you to—

A. No. That's—that's what I told him. I mean, you're looking at—that's what's called a defense tactic. How do—what do you think the words were that brought out that, that's what's called a defense tactic.

Q. Well, I—I think you probably answered that. But what—you did use the words that's what's called a defense tactic, right?

A. And—yes.

Q. And what you meant was the tactic of taking one paragraph

of the Complaint and focusing all the attention on that. And that was the defense tactic, right?

A. Right. Another big gap, you know. That's—

Q. What's the big gap that you keep—that you're referring to here? The fact that he didn't write all that down?

A. No; no. I'm—I'm looking at his notes.

Q. When you say another big gap, what do you mean? What's the—what's the other big gap you're talking about?

A. I have—I have—

Q. Are—are you referring to the fact that he doesn't go into a lengthy description of what the defense tactic is?

A. I'm talking about spaces, big spaces where—

Q. Well, you're talking—you talking about physical spaces on this paper?

A. Physical spaces.

Q. That's what's called a double space.

A. Well, it looks like a mighty big space. It doesn't appear when

he's interviewing other people.

Q. Well—

A. I mean, take a look—

Q. It most certainly does, Mr. Angino, but I don't want to argue with you about it.

A. We don't have to argue, but—

Q. It most certainly does. Obviously, this computer is on a format that ordinarily has what you and I would call a double space between every line. And then if you hit the—the return bar twice, you'll get, you know, the larger space. And so obviously, he's hit the return bar twice to create what you call these big gaps, right, to signal a new thought. Isn't that a perfectly normal way of taking notes? When you take notes in—

A. What I'm going to say—suggest to you is, this does not appear to be following—

Q. I'm not sure I understand.

A. —a logical progression—

Q. I'm not sure I understand that.

A. —as—as we discussed it.

Q. Are you suggesting that the notes are out of order?

A. No. I'm suggesting that there's potentially several things. Number one, I talked for a while on this particular area, and he didn't find anything that—what I was saying that was worth putting down here. Or secondly, and that's why I have some follow-up request for production and Interrogatories, has anything been deleted, you know. This would, from my experience, potentially show up as deleting things that appear.

Q. But the only—when you—when you say big gap, all I understand you to be saying here is that you gave an explanation of the defense tactic, and the explanation is not there, but the topic sentence or the main point that is the defense tactic is there?

A. Yeah. But how in the world can you just put down that's called a defense tactic without even knowing what I said. I mean, you know—

Q. That's—that's not an answer to any question, Mr. Angino.

A. All right.

Q. There's nothing left out of here from what you can tell, other than your—

A. My explanation.

Q. —your account of what the tactic was?

A. Right. That's all.

Q. And then the notes say, that is the kind of thing that Bennett is on her side, Al Gores—

A. And see that, that—

Q. —intends to call Ms. Gore, strategy, this was a particular situation Ms. Gore was interested in, Dionne Warwick.

A. And see, that doesn't tie in at all. That's the kind of thing that—

Q. Did you say those things, or is that—is that a—are those obviously notes that were made of statements that you were making?

A. Well, that is the kind of thing that went up above, with that's what's called a defense tactic, you know. It obviously did.

Q. So he hit the space bar at the wrong point. Okay. That's all—that's all we can conclude from that?

A. Whatever. Whatever you want to conclude from that.

Q. Then he goes on, and he talks about Bennett and Gore?

A. And see, that left out all of my discussion as to what a wonderful person Mrs. Tucker is. I mean, you know, I explained to—

Q. Well, up above, he writes down your statement that she is one of the most respected individuals in the African/American community, right?

A. Yeah. But I mean I talked—

Q. What else did you say about her?

A.—I talked to him about the history of 1993 through 1997. I talked to him about Bennett, I talked to him about Al Gore's wife, Tipper Gore. I talked to the fact that Tipper Gore, I think, was initially involved in this anti-gangsta rap type of thing. And I—I could tell from his voice, oh, hi, yeah, you think you even know—you think she even knows Tipper Gore.

You know, when you talk to people, it was like he was giving me lip service and challenging me, yeah, you think the vice-president's wife is going to come into a courtroom and talk, you know, on her—you know, it's like he was belittling what I was saying, like he didn't really believe what I was saying. A strategy—this was a particular situation Mrs. Gore was interested in, Dionne Warwick.

That involved that whole history of Tipper Gore being involved, Dionne Warwick being involved in 1993, what happened from 1993 to 1997, which shows to me that he didn't care about what I was telling him. The story was already prepared to talk about sex in the lyrics, and that was it.

Q. What—what is it that shows you that he wasn't interest in what you were saying?

A. Because he doesn't have what I—

Q. He doesn't have enough detail down? He—he didn't take down—

A. How can he write a story if he doesn't have my story.

Q. He didn't take down enough of what you wanted him to take down?

A. That's right, exactly.

Q. He didn't write about Mrs. Gore, Bill Bennett or any of those things, right?

A. Right.

Q. Okay.

A. Here's a perfect thing.

Q. You do—you do know now that Mr. Roberts had written a previous article about all of this and was familiar with it, right?

A. I know the other article, and to the extent which the article discusses things.

Q. So evidently you weren't telling him anything he didn't know, right?

A. Yeah. But I—I wanted to—if a story was going out, I wanted it to be a fair story. I didn't want it to be a one-sided story. I didn't want it to be a distorted story. Take a look at the—

Q. He wasn't writing a story about the history of the anti-gangsta rap movement, was he, Mr. Angino?

A. Well, he was writing—

Q. The bottom line is, I don't understand what—all I'm asking you to do here is tell me—you said you were going to fill in the gaps, tell me what you said. And instead what you're doing is you're complaining that he had some fixed idea about his story. I know—I know you don't like the story. I just want you to fill in the gaps. What did you say, are these notes accurate or inaccurate, and tell me what else you said that—that's not here?

A. Right. I filled in the gap there. I told him about this whole history of things. The next area is, I told him that the record and

everything else in the Complaint is intertwined. Do you see that? Put out a record to defame her. It's all intertwined. I said the record was merely the last straw. It was basically, if you look at the thing, it started out with the lawsuits, it went into the depositions, it went into the investigation, it went into this. I said it's all intertwined. You can't talk about the—the lyrics without talking about all of the other things. That—that's what that says. Put out a record to defame her. It's all intertwined, okay.

Then, there is another gap. What I suspect is that the major companies involved here, I'm trying to bring him away from Tupac Shakur to the other companies, Seagrams and Time Warner. They know they're wrong in supporting. I don't know what will happen. So what I was telling him is look, what we're seeing is this—is Tupac Shakur. Everything is being lyrics, Tucker, Shakur. There are 11 other defendants here. The reason we brought the lawsuits against Seagrams and Time Warner and Iovine and the other people, was basically to show that they're the money behind it. Nothing happens

without those six major companies that distribute music.

So that—you know, you can't take this Complaint and just say it's a suit against Tupac Shakur. It's a suit against 12 defendants. This is what I told him. But you know, what the story came out to be, it was against Tupac Shakur, it left out the other 11 defendants. I'm saying they know they're wrong.

Q. So this is what you were explaining in the portion of the notes that say what I suspect is that major companies involved here, Seagrams and Time Warner, they know they are wrong in supporting. I don't know what will happen. And you elaborated along the lines of what you just said?

A. Along the lines.

Q. And then did you say—

A. He—he—he then asked me what do you think will happen. And I—and he wanted to find out will this case go to trial, or will it get settled. And I said, I can't discuss whether the case is going to go to trial, or a case is going to get settled. I said, you know, that's something we'll. just have to wait and see. If this case winds up in trial, Dr. Tucker has a lot of friends who respect her in high positions,

I said that. Have him talk to Gore, that was where he questioned whether Tipper Gore would testify. And then—and I haven't talked to either of them, these people would support her if I asked her. That's what I said. I would be surprised if the matter isn't up for trial for a year. I basically told him that at the Eastern District, cases come to trial within a year. Her case against California has been going on for two years, pointing out that this matter is going to move—this case is going to move rapidly. And basically, I think you've gotten out my side of what the conversation was.

Q. Okay. Now, this conversation, did it, to the best of your recollection—is the sequence of Mr. Roberts' notes correct, I mean, that the extent that he refers to these different subjects, is it your recollection that they did get discussed in the order in which he's got them down here?

A. I couldn't dispute that, you know.

Q. And it does appear from your account that you had—gave him some—somewhat lengthy—

A. Explanation.

Q. —explanations of the involvement of these other defen-

dants, of the involvement of Mrs. Gore and Mr. Bennett of the 11 days of depositions, of all that happened in that other case?

A. Sure.

Q. And that the discussion of the loss of consortium claim was only one of many subjects you discussed in that conversation?

A. Absolutely.

Q. And the conversation we know, lasted only about 14 minutes in—in total, right?

A. Fifteen, I think, but whatever.

Q. Fourteen and a fraction. And so it's fair to assume, I take it, that the discussion of loss of consortium count was a small portion of that 14 minutes?

A. I would guess that—my recollection is 14.9 or 14.7 or something like that. If I were to apportion the discussion of the loss of consortium, I would say it probably was one, two or three minutes out of all of that.

Q. Fair enough. Now, you prepared a—

MR. BAINE: We have a lot of hungry people here. Okay, we'll break for lunch in a minute.

BY MR. BAINE:

Q. You prepared a memorandum of your conversation with Mr. Roberts in December of 1997, correct.

A. I prepared it at some point, yes.

Q. December 11th, 1997. And you prepared that memorandum after a conversation with me, in which I indicated to you that Mr. Roberts—I indicated to you what Mr. Roberts' recollection of the conversation was, right?

A. That's right.

Q. And at that point, you became aware that Mr. Roberts was going to be testifying to an account of the conversation that would tend to exonerate him. And at that point, you prepared a memorandum of your own version of the conversation, correct?

A. Correct.

Q. And you sent that memorandum to me?

A. Yes.

Q. That was the first time you ever prepared any notes or memorandum of that conversation?

A. Correct.

Q. So when you finished this conversation with Mr. Roberts on

August 20th, 1997, and you got off the phone, and you thought, you know, he's going to write this up the way he wants. And it's not going to come out the way I want. You didn't, at that point, prepare a memorandum contemporaneously recording what you had said to Mr. Roberts?

A. Correct.

Q. Did it occur to you that perhaps you should do that, because if Mr. Roberts wrote an article like the articles that had already been written and published, that you might want to sue him?

A. No. I didn't think of suing Newsweek until Time came along.

Q. In other words, if—if—if the Time article had not come out repeating this, you would not have sued Newsweek?

A. I don't know. But I'm giving you—I'm giving you the story.

Q. It didn't—it didn't occur to you to sue Newsweek until you saw it in Time as well?

A. Right.

Q. Okay. Thanks a lot, Time.

A. We just had had enough by that time, you know.

Q. Now, let me show you what's been marked as Angino Exhibit Number-24, which is your memorandum that you prepared and sent to me in December, with a cover letter to me that's dated December 12th. And your memorandum, which is—begins on the third page of this document, purports to describe the conversation. Does that memorandum describe the conversation, in the sequence that you remembered at the time?

A. I don't think so. But let me take a look at it, because I haven't looked at it since I probably sent it to you, all right.

Q. Okay.

A. No, this isn't the sequence. The sequence is discussing the constitution. That was the first thing that we talked about.

Q. What this memo suggests on the bottom of page 1 is that Mr. Roberts began the conversation by explaining "He was writing an article dealing with the various lawsuits against Tupac Shakur's estate." Is that how the conversation began?

A. That, I don't remember. I—I put that here, but I'm saying right now, I don't remember how the conversation started.

Q. Did Mr. Roberts, early on in the conversation, refer to Mr. Fischbein?

A. I don't recall Fischbein's name coming up, except I probably said Fischbein's spin at some point in time then.

Q. You don't recall Mr. Roberts saying that—you don't recall Mr. Roberts mentioning Mr. Fischbein's name?

A. Not today.

Q. When you wrote the memo on December 11th, you wrote at the bottom of page 1, "He," Johnnie Roberts "stated that Fischbein considered our lawsuit the weakest action of all."

Is that your recollection today?

A. No.

Q. So that today you don't recall that Mr. Roberts said that to you?

A. No.

Q. Okay. And then your memo says, "Roberts gave Fischbein's spin as to our lawsuit being one whereby we claim that the Tucker's sex life had been affected by Tupac's recording."

Is that your recollection today that Johnnie Roberts said that?

A. Nope.

Q. Okay. So as you sit here today, you don't recall that Mr. Roberts said to you that Mr. Fischbein had explained that this was a lawsuit whereby you were claiming the sex life had been affected?

A. No.

Q. Okay. You indicated in your memo that you asked Mr. Roberts "if he had read our Complaint." Is that your recollection today?

A. That's clear.

Q. He said he did?

A. Right.

Q. And you recall him saying that?

A. Yes.

Q. Did you actually ask him to get the Complaint out and look at the paragraph dealing with damages?

A. Yes. All of that is clear.

Q. Okay. Did you point out to him that there was absolutely no mention of sex in any of the paragraphs?

A. Yep.

Q. Did you specifically direct his attention to paragraph 50?

A. Yes.

Q. Did you direct his attention to paragraph 50 initially, or did he ask you about loss of consortium initially?

A. He talked about loss of consortium, but I directed him to paragraph 50.

Q. Okay. So he mentioned loss of consortium before you directed him to paragraph 50?

A. Right. Basically, we're using loss of consortium. He didn't use the word loss of consortium. He basically talked about sex. And I said is that all you guys want to talk about is sex. Take a look at the Complaint, look at paragraph 50.

Q. So you directed his attention to paragraph 50?

A. Right.

Q. And you told him that in very rare circumstances, a claim of loss of consortium can involve an interference with sexual lives of husband and wife, right?

A. Right.

Q. Now, you write in your memo that you "pointed out to Mr. Roberts that our consortium claim in this case did not in any way

involve any claim that Tupac Shakur's defamatory recording affected the Tuckers' sex life."

Now, when you wrote this memo, of course, you weren't under oath. You've indicated earlier that you are under oath today, and today you cannot say that you specifically said that the claim is not one involving sex, right?

A. I've testified for as much as I can remember today, under oath or not under oath. I don't write any differently whether I'm under oath or not under oath.

Q. But—but today, you can't recall specifically saying to Mr. Roberts that the case does not involve sex, right?

A. I said what I said. The best I can recollect is, I said in every way, shape or form, that it didn't involve sex. Whether I actually used the word, I would be less than candid if I said that. I can remember that exactly.

Q. Do you remember exactly saying that there was no use of the word sex in the Complaint?

A. Yes. Yes. I said the word sex never appears in the Complaint.

Q. And then there followed the discussion about what consortium meant, and how it can include sex, but that's one of the less significant aspects in human relations?

A. Right.

Q. And then there's the reference in this memo to the—to the discussion of Mrs. Gore. And then the reference to the Falwell/Hustler suit. And now you're telling us today that this memo does not correctly place that conversation in sequence, right?

A. That was the first area of discussion. I don't think I intended to prepare this memo as a chronological—

Q. Now, let me just ask you a question without regard to the memo for a second. You indicate in the—in the first page of this memo, before you get to the conversation with Mr. Roberts, that you recommended, because of their high profile, the Tuckers' high profile, that they go on a speaking circuit.

Is that—did you tell Mr. Waters that he should tell the Tuckers to actually affirmatively go out on the speaking circuit and make contact with people to explain all of this and not wait passively for

press inquiries?

A. I did.

Q. That's what you wanted them to do?

A. I did.

Q. Are you aware of the fact now that they did not do that?

A. I'm aware of what they did.

Q. That—that—that meant what they did, it was not to go on the speaking circuit, is it?

A. All—all they did was respond to supposedly that—those four people that showed up on the 4th or 5th.

Q. Right. All they did was passively answer questions by people who came to them, right?

A. That's right.

Q. And we now know that when Mr. Tucker passively answered the questions, he did not unequivocally say my case has nothing to do with sex. He said it's just a small part of it, right.

A. We see what we see.

Q. Okay. Now, in your memo, and I realize at the time that you wrote the memo, you didn't—you hadn't sat through the depositions and looked at the articles that were written.

But in the memo you wrote, "Despite the Tuckers' public announcements to the news media that the word consortium in this case did not refer to sex, and they were making no claim for sex damages," et cetera. As we sit here today—

A. Where—where are we?

Q. Third paragraph of the memo.

A. Mr. Robert mentions Falwell/Hustler ...

Q. No; no; no; no. Third paragraph of the first page of the memo.

A. Oh, you're back to the first page.

Q. Yeah. First page, sorry. You see the words "Despite the Tuckers' public announcements to the news media."

A. Right. Because I had assumed that they had.

Q. Right. And that's what I'm getting at. When you wrote this memo, you assumed that they had made public announcements to the news media that the word consortium in this case did not refer to sex, and that they were making no claim for sex damages, but now you realize that they did not?

A. Right.

Q. Okay. And did you mention to Johnnie Roberts in your

telephone conversation with him, the Tuckers' statements to the news media that you assumed that they had made, but didn't know that they had not made.

A. I don't know.

Q. Okay.

A. I—I would have said to him, and I think I did say to him, and if I really recollect it's—I was frustrated by what I had said to the media in response to calls that they had made to me. So I know I said what I had done. I don't recall saying the Tuckers had done anything.

Q. Okay. In your memorandum of December 11th on page 2, in the third full paragraph, you say in the second sentence, "I became exasperated and went through the entire history from the time of the filing of the Complaint to the article in the Philadelphia newspaper, to the Tucker's going out at my suggestion and pointing out publicly that our lawsuit had nothing to do with sex."

I take it, as you're sitting here today, you—you don't recall that you specifically discussed that with Mr. Roberts?

A. No.

Q. Okay. And is there anything—

A. Let—let the record show that I wrote this before I ever saw Johnnie Roberts' record of what had—we actually talked about.

Q. But after you spoke with me about the substance of that conversation and about the different recollections of the conversation?

A. Right.

Q. And this memorandum was not written in the regular course of business here at Angino & Rovner. This memorandum was written specifically in response to my indication to you of what Mr. Roberts' recollection of the conversation was?

A. Absolutely. But I'm saying, I sat down after that conversation and dictated this, and did not intend it to be in a chronological order. Because I said here, this will be confirmed by a long distance telephone log. I—I felt there eventually would be a log that would tell us how long we had talked.

Q. Did you—who prepared the Amended Complaint that was drafted after the publication of the Newsweek article?

A. Probably me.

Q. Do you have a specific recollection of being the person who did it?

A. I think so. I think so. I think you'll find that after a certain point, I took over.

I mean, you know, I get to a certain point in the case, and then I start doing just about everything.

MR. BAINE: This would be a good time to take a break for lunch. Some people are hungry, some people are not.

MR. ANGINO: Yeah.

MR. BAINE: We'll try to make it a quick lunch break.

MR. ANGINO: I was going to say it's going to be difficult to have quick lunches, unless you want fast food.

MR. BAINE: Let's go off the record.

THE VIDEOTAPE TECHNICIAN: Off the video record at 1:57. This is the end of tape two.

(Luncheon recess.)

THE VIDEOTAPE TECHNICIAN: We are back on the video record at 2:53. This is the beginning of two 53 beginning of tape three. Proceed.

BY MR. BAINE:

Q. Mr. Angino, Mr. Roberts notes in his conversation with you containing the following statement that I read to you before, we're talking about all of this affecting Tucker. If someone affects you physically, mental, et cetera, they have affected the family union.

Did you make a statement to that effect?

A. Probably.

Q. What did you mean when you referred to someone affecting you physically? In this case, what was your understanding of how the actions you had claimed, had affected the Tuckers physically?

A. I don't think I was referring to this case. We were talking about consortium claims and talking about family unions, and we were talking about what is a consortium count, how it's affecting somebody in all the different ways.

Q. Did you say with reference to this case that the claim, in essence, was that the defendants had affected the family union?

A. I don't think I did. I think that was more, again, a generali-

zation of when there's a consortium count, the family union is affected. I don't think I specifically referenced this case, these factual circumstances.

Q. Immediately in the preceding sentence, in the notes anyway is—we're talking about all of this affecting Tucker. And then it says it affected the family union. So do you think that you could well have said with respect to the Tuckers that these lyrics had affected the family union?

A. Sure. That's fair.

Q. That is the quote that's attributed to you in the Newsweek story, which has been marked as Exhibit-25. It says "Her attorney, Richard Angino, says the lyrics 'affected the family union.' "

That is not a misquotation, is it?

A. I don't think so.

Q. After your conversation with Mr. Roberts, did you discuss that conversation with—with anyone?

A. I did say it to somebody, because I was frustrated. And I've been trying to rack my brain as to who I said it to. I knew—you know, it was one of those things, you finish a conversation and you go out, and I said I just got off the phone with this guy, you know, for all this

time, and he is just not listening to me. He's going to write what he wanted to write, why did he even talk to me for, you know.

Q. You—you—you think you said that to somebody, but you can't remember who you said it to?

A. That's right. And it would have been somebody in the office and ...

Q. Have you asked people around the office whether or not they recall your making a comment to that effect?

A. I haven't done that up to this point, no.

Q. If you do, at some point, discover who it was you had that conversation with, will you let us know?

A. I will absolutely let you know.

Q. Thank you.

Did you, Mr. Angino, prior to the time that you actually were filing a Complaint against Newsweek and Time, did you discuss this conversation that you had with Mr. Roberts with Mr. or Mrs. Tucker?

A. Yes. I think so.

Q. That would have been in connection with the discussion

about filing the lawsuit?

A. Yes. The issue still was why we should do this. What I told Mr. and Mrs. Tucker is, enough is enough. I talked to Johnnie Roberts, I told him this case didn't have anything to do with sex. I filed an Amended Complaint. I served Time Warner, and they went ahead and basically then filed another article. You know, it was like, what do you have to do to get these people to listen, you know.

Q. But, did you talk to the Tuckers specifically about the Amended Complaint, the First Amended Complaint, not the Second Amended Complaint?

A. I don't think so. I think I talked to the Tuckers about the Complaint that was going to—or again, we're getting our people mixed up. I did talk to them about the original Complaint against Time and Newsweek, if that's what you're talking about.

Q. That wasn't my question, that was going to be my next question. I take it that you did talk to the Tuckers about the Complaint against Time and Newsweek. You did not talk to them specifically about the First Amended Complaint in the case against MTS and Interscope?

A. I just did that automatically.

Q. And the Second Amended Complaint against MTS and Interscope, I believe, was filed at the same time as the Complaint against Time and Newsweek, right?

A. Right.

Q. And it was in connection with those pleadings that you had the conversation with Mr. and Mrs. Tucker?

A. It was mainly in connection with what was the suit against Time and Newsweek, because we sat down, and we said enough is enough. You know, I had this conversation with Newsweek, we sued Time. We actually, you know, served Fischbein with the other Amended Complaint. And they were just all ignoring us. So what we need to do is we need to file this suit against Time, Newsweek and Fischbein.

Q. And would it be fair to say, again, Mr. Angino, that the idea to file the new suit against Time, Newsweek and Mr. Fischbein was your idea?

A. Yes.

Q. That was not Mr. Tucker's or Mrs. Tucker's idea?

A. That's correct.

Q. And your purpose in filing that Complaint, if I understand

your testimony correctly, was to put an end to these kinds of reports?

A. Frankly, it was several things. This was, I think, at or about the time of the Diane situation. It was at or about the time with the Albert situation. It was at or about the time when the media to me was just out of control. And you know, I'm saying this, but maybe it won't show up actually that it was. But in effect, I felt that the media didn't care what they said about whom, and that—when I sat down with the Tuckers, I said, we've got to do something. It appears as if the press doesn't care what they write about whom and whatever harm is done to those people. And that was really a substance and basis for that lawsuit.

Q. When you referred to the Diane situation, you're talking about Princess Diane's death?

A. Yes. Maybe I'm wrong. I didn't, you know, I'm just—I don't know when she died, you know, I'm just thinking that somewhere in my mind, we were—I was upset with the media, you know.

Q. And when you talk about the Albert situation, you're talking about the reporting of the criminal charges against the sports caster

Marv Albert?

A. Right. Now as we talk about this, maybe that happened later in the year. I don't know. But all I'm saying is—

Q. Regardless of whether those particular reports were taking place at that particular time, what you do remember is that you felt the media was out of control?

A. Yes.

Q. And that was part of your thinking that this—it was time for you to bring a lawsuit against Time and Newsweek and Mr. Fischbein?

A. Yes. And obviously my clients agreed that the media was out of control and agreed to do this, you know.

Q. But this did not originate with them coming to you and saying, Mr. Angino, we've been injured in the following ways, and we would like you to seek some kind of legal remedy for that. That's is not how it came about?

A. I think they communicated to me that they were the laughingstock in the world. That hurt them.

Q. When did they communicate that to you?

A. Oh, it probably had to do when we sat down, and we were discussing bringing this lawsuit, you know.

Q. Okay. So, in other words, when you—when you suggested to them that the media was out of control, something had to be done, you then had a conversation during which they said to you they felt they were the laughingstock?

A. Right.

Q. You indicated earlier that you believe that you prepared the Amended Complaint; right?

A. Yes.

Q. Let's look at Exhibit Number-26, which is the Amended Complaint that was filed September 2nd, 1997. Do you recall what the amendment was to the Complaint that you made at that time?

A. I don't. But I assume it had something to do about talking about what Fischbein was doing. And I'm assuming that it occurs on page 8, where we're saying "Defendant Co-adminstrator of the Estate of Tupac Shakur has continued to defame and harass plaintiff by holding her up in a false light even after the complaint in this

matter was filed on June 21st, 1997.

"Defendant Fischbein made false and misleading statements regarding the claim herein, through published statements that C. DeLores Tucker filed suit because of a 'loss of her sex life.' This statement was untrue, and Defendant Attorney Fischbein should have known it was untrue."

Q. And what prompted your decision to file this Amended Complaint, I take it, was the appearance of the Newsweek article which hit the newsstands on August 25th, the week before this Amended Complaint, right?

A. Well, that, and also the Philadelphia article where Fischbein was quoted as of August 2nd. Those two things were situations where I said this Fischbein guy is out of control.

Q. And as of the date of this Amended Complaint, September 2, 1997, you were aware of the Newsweek publication and had decided to amend the existing Complaint against Mr. Fischbein, but not to sue Newsweek?

A. At the present time, right.

Q. And subsequent to that point, did you ever contact Newsweek and ask them to retract, correct, or clarify the publication

that they had made concerning your lawsuit?

A. It's just like in a court of law. Once something is out, to have somebody reiterate the thing again, doesn't really relieve the damage. To answer your question, no.

Q. And you didn't send a letter to the editor for publication or anything like that?

A. No.

Q. So, there was nothing that Newsweek did or that you did in connection with Newsweek after September 2nd, 1997, before you actually sued Newsweek, right?

A. That's correct.

(Attorney Hours By Case was marked as Angino-39; Attorney Hours By Case With Comments was marked as Angino-40 and Para & Law Clerk Time Sheets were marked as Angino-41 for identification.)

BY MR. BAINE:

Q. Now, if we could, at this point, take a look at some of your time records. I just want to see if we can draw some conclusions about who was doing what kind of work at these various times.

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16 September 1998

Mr. Richard C. Angino
4503 N. Front St.
Harrisburg, PA 17110-1708

Dear Mr. Angino:

I am happy to respond to your letter and call about reviewing the court documents involving Delores Tucker.

By way of background, I was a reporter with United Press International for nearly 30 years, most of them in Washington. For the past nine years I have been on the faculty of the University of Missouri School of Journalism, and have authored several books, including An Ethics of News: A Reporter's Search for Truth (Georgetown, 1989). My resume is enclosed.

I assert in Ethics that the reporter's main responsibility is to discover the truth in whatever the assignment is. I define truth as simply being "the heart of the matter," but that it also surely includes the dimensions of fairness and accuracy.

As a preliminary opinion, it seems to me that any news account that reduces Mr. Tucker's claim of "loss of consortium" to being merely, and especially, a diminished sexual life, is wrong and a violation of basic journalistic ethics.

Cordially,

Wesley G. Pippert
Director and Associate Professor of Journalism

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29 September 1998

Mr. Richard C. Angino
Angino & Rovner, P.C.
4503 N. Front St.
Harrisburg, PA 17110

Dear Mr. Angino:

This letter constitutes my report as required under the Federal Rule of Civil Procedure 26(a)(2)(B):

1. Complete statement of all opinions to be expressed

I will testify that the primary task of a reporter is to report and write the truth, which I define as "the heart of the matter," in whatever the story happens to be. The thrust of one particular story may not focus on this, but the overall thrust of the story or the body of stories about a particular subject must meet this criteria. The truth clearly contains the ingredients of accuracy and fairness.

2. Basis and reasons for the opinions.

I base this opinion on 30 years as a reporter with United Press International, including extended assignments in two state capitals, Congress, the White House, and an overseas posting, and as author of seven published books and more than 100 articles. One of the books, An Ethics of News: A Reporter's Search for Truth, 1989, Georgetown University Press, develops these thoughts. I base it also on my readings in the field, and especially, my conversations and friendships with uncounted numbers of journalists over the years.

3. Data or other information.

4. Any exhibits.

5. Qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years.

My resume is attached, along with a list of my publications.

"Spotlight on Africa: Advice from Annan," Christian Century, 1 April 1998.

The Washington Post, short pieces for its website on the Inter-American Development Bank's Cultural Center, Mexican Cultural

Center, and Susan Conway Gallery.

Reviewed Telling the Truth, by Marvin Olasky, in QV, February 1997.

One of several scholars and journalists interviewed for study on "Personality and the Presidency," Technical Report No. 11, October 1996, by Thomas R. Faschingbauer, Steve Rubenzer and Deniz Ones.

Essay in Lamp Unto My Feet, ed. Art Toalston, HarperSan Francisco, 1997.

"Christians in the Secular Press," Moody, December 1995.

"Slain Are the Peacemakers: How Israel's Hawk Became a Dove," Christianity Today, 11 December 1995.

Edited Regional Arms Control: Middle East Perspectives, by Search for Common Ground, 1995.

"Peeking through Keyholes: It is not the role of the media to play censor, but saturation coverage demands careful coverage," Iowa Alumni Review, Autumn 1994.

"What To Do Now If You Want To Be a Foreign Correspondent," The Responsible Reporter, ed. Bruce J. Evenson (Northport: Vision Press, 1995).

One of the writers for official report on "Safeguarding Our Youth: Violence Prevention for Our Nation's Children," a forum sponsored by the Departments of Justice and Education, 20-21 July 1993.

Article on the investigation of National Medical Enterprises for Alcoholism and Drug Abuse Weekly, September 1992.

"No man's land: Israeli deportations and ensuing unrest underline instability," World magazine, Jan. 9, 1993.

"Why Switch? Boredom and burn-out push many from newsroom to classroom," based on survey of about 40 working journalists who went into academia, Quill, April 1992.

"Latest Squabble Not A Cause For Divorce," three experts assess state of the U.S.-Israeli relationship, World, March 28, 1992.

"Awesome Beauty in the Heartlands," cover story in Avis Traveler, January 1992.

"Discover the New York New Yorkers Know," Avis Traveler,

The Hand of the Mighty: Right and Wrong uses of our Power. 166pp., (Grand Rapids: Baker, 1991).

An Ethics of News: A Reporter's Search for Truth. (Washington: Georgetown University Press, 1989).

Review of God in the White House: How Religion Has Changed the Modern Presidency, by Richard G. Hutcheson Jr. (New York, macmillan, 1989). in Perspectives: A Journal of Reformed Thought. June 1991.

"How Does the President Stand with Evangelicals," Moody Monthly, January 1991.

Review of Blessed are the Peacemakers: A Palestinian Christian in the Occupied West Bank, by Audeh Rantisi and Ralph Beebe, in News Network International's NNI Review, January 1991.

"Worldly Reporters and Born-Again Believers: How Each Perceives the Other," in American Evangelicals and the Mass Media. ed. Quentin J. Schultze (Grand Rapids: Zondervan, 1990)

Contributed one of 20 essays (along with Pope John Paul II, Alan Paton, C. William Pollard, Malcolm Muggeridge and others). Letters to Graduates. (Nashville: Abingdon, 1990).

"Laid-off in Mid-life," the Washington post, 15 Nov. 1990.

Contributed to "The Role of News Services in Religious Programming," Religious Broadcasting, November 1990.

6. Compensation to be paid for the study and testimony.

This has not been discussed.

7. Listing of any other cases in which the witness has testified as any expert at trial or by deposition.

None.

Thanks.

Cordially,

Wesley G. Pippert
Director and Associate Professor of Journalism

Appendix

WESLEY G. PIPPERT

Professional:

Associate Professor of Journalism and Director, Washington Program, University of Missouri School of Journalism, 1989- . Tenured as of 1993.

Special Assistant, Rep. Paul B. Henry, R-Mich., 1989.

United Press International, 1955-67, 1969-88:
Senior Middle East Correspondent, 1986.
Manager for Israel, 1983-86.
Congress, 1981-83 (Beat: social legislation).
The White House, 1975 (Ford), 1977-81 (Carter).
Principal UPI reporter, Carter campaigns, 1976, 1980.
Principal UPI reporter, Watergate, 1973-75.
McGovern presidential campaign, 1972.
Cultural affairs reporter in Washington, 1971-83.
Washington overnight editor, 1969-71.
Minneapolis, Bismarck, Sioux Falls, Pierre, Chicago bureaus, 1955-61.

Press aide, Sen. Charles H. Percy, R-Ill., 1967-68.

Academic:

Wheaton College, M.A., 1966.

University of Iowa, B.A., with honors, 1955.

Near East School of Archaeology, Jerusalem, certificate, 1964.

Honors:

Fellow, Institute of Politics, and Fellow, Center for Press, Politics and Public Policy, Kennedy School of Government, Harvard University, 1987.

Journalism Fellow, National Endowment for the Humanities, University of Michigan, 1975-76.

Congressional Fellow, American Political Science Association, 1966-67, (Rep. Morris K. Udall and Sen. Charles H. Percy).

Phi Beta Kappa and Class Marshal, University of Iowa, 1955.

Sigma Delta Chi professional journalism fraternity, scholarship award, University of Iowa, 1955.

Author of:

The Hand of the Mighty: Right and Wrong Uses of Our Power.

1991, Baker Book House.

An Ethics of News: A Reporter's Search for Truth, 1989, Georgetown University Press.

Land of Promise, Land of Strife: Israel at 40, 1988, Word.

The Spiritual Journey of Jimmy Carter, 1978, Macmillan.

McGovern chapters in Jaws of Victory, ed. Clifford Brown, 19[illegible], Little, Brown. Lead reviews in the New York Times and Washington Post, which singled out Pippert's chapters as especially newsworthy for his "masterful prose."

Memo for 1976: Some Political Options, 1974, InterVarsity Press, rated by Eternity magazine reviewers as one of the 25 most significant books of the year for evangelical audiences.

Faith at the Top, 1974, David C. Cook Publishing, a collection of biographies.

Missions and Reconciliation, 1969, United Methodist Board of Missions.

More than 100 articles in 50 publications, including the New York Times op-ed page, Chicago Tribune Sunday magazine, Quill, Christian Century and Christianity Today.

Speaking:

About 100 colleges and university and professional groups.

Adjunct professor of English, Gordon College, fall 1986, 1987.

Adjunct professor of journalism, Virginia Tech, 1975-80.

Instructor, New College at Berkeley, summer 1980.

Instructor, C.S. Lewis Institute, Washington, autumn 1979.

Local Preacher's license, United Methodist Church, 1957- .

Lay pastor, Blunt-Harrold (s.D.) Methodist churches, 1957-61.

Personal:

Born, 13 May 1934, Mason City, Iowa
Two children, Elizabeth, born 1985, and David, 1986.

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September 16, 1998

Richard C. Angino
Angino & Rovner
4503 Front Street
Harrisburg, PA 17110-1708

re: Tucker v. Time and Newsweek, et al.

Dear Mr. Angino,

Thank you for the opportunity to review this matter. I have reviewed the definitions of consortium, the complaints, the articles included that related to Ms. Tucker (exhibits to complaint), deposition of Johnnie L. Roberts, documents referred to in that deposition, Newsweek researchers' manual, Newsweek memos relating to research, deposition of Belinda Luscombe, documents referred to in that deposition, Time Editorial Guidelines, deposition of Richard Angino and deposition of Paul Waters.

After reviewing these materials, I would be willing to testify to the following:

1) news articles based on primary research that referred to the Tuckers as claiming that their sex lives were affected by Tupac's lyrics failed to conform to reasonable journalistic standards;

2) depositions of J. Roberts and B. Luscombe indicate that the reporting that resulted in the characterization of the Tuckers' complaint as regarding their sex lives failed to conform to reasonable journalistic standards, including the standards set forth by their news organizations;

3) there is indication that decisions to report the complaints as related to the Tuckers' sex lives were made with a disregard for the truth.

Any formal written or oral testimony will include specific references to depositions, exhibits, research guides/editorial policies, professional society codes of conduct and ethics (including Society for Professional Journalists, Associated Press Managing Editors and American Society of Newspaper Editors), and newswriting/reporting textbooks that are used to teach fundamental standards to future journalists.

Sincerely,

Deni Elliott

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October 4, 1998

Richard C. Angino
Angino & Rovner
4503 Front Street
Harrisburg, P.A. 17110 1708

via FAX: 717 238 5610

Dear Mr. Angino,

Regarding the requests by Mr. Williams of 9/28/98:

1. My statement of opinions was included in my letter to you dated 9/16/98.

2. The basis and reasons for the opinions were formed through my careful reading of documents that you provided, specifically, the complaints, the news stories included in exhibits to complaint, depositions of Johnnie L. Roberts and Belina Luscombe, Newsweek researchers' manual, Newsweek memos relating to research, and Time Editorial Guidelines.

In addition, my opinions were formed through familiarity with codes that express conventions accepted by U.S. journalists. Specifically, my opinions are based on ASNE Statement of Principles, APME Statement of Ethical Principles, and The Society of Professional Journalists Code of Ethics.

The basis and reasons for my opinions were also formed through my 20 years of experience in analyzing standards of journalistic behavior. Some of my published writings relate to opinions I formed in this case. In particular:

1. Elliot D. Cohen and Deni Elliott. *Contemporary Ethical Issues: Journalism.* (Co-editor/Chapter Author) ABC-CLIO, 1998, Chapter 1.
2. "Journalistic Research," *Accountability in Research*, Vol. 4, 1996
3. and Charles Culver, M.D., Ph.D., "Defining and Analyzing Journalistic Deception," *Journal of Mass Media Ethics*, Vol 7, No. 2, Spring 1992
4. "On Deceiving One's Source," *The International Journal of Applied Philosophy*, Vol. 6, Summer 1991, No. 1
5. "Ethics codes/written rules: the problem is the 'writing,'" *FineLine*, Jan. 1990
6. "Identifying AIDS Victims: The Destruction of Dr. Huse," *Washington Journalism Review*, October 1988.
7. "All is Not Relative: Essential Shared Values and the Press," *Journal of Mass Media Ethics*, Vol. 3, #1, 1988.

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8. "Creating the Conditions for Ethical Journalism," *Mass Comm Review*. Volume 14, #3, 1987.
9. *Responsible Journalism*. (Editor/Chapter Author) SAGE:1986, Chapter 2.

3. Data or other information include my current reading of trade and scholarly press regarding reasonable journalistic conduct.

4. Exhibits include those attached to depositions and complaints in this case.

5. My c.v., which I have provided for you, lists my experience and publications.

6. Compensation is at daily rate of $1000/day or hourly rate of $200/hour.

7. The only case in which I have been involved as expert that has gone to deposition or trial within the past four years was an arbitration case involving the Akron Beacon Journal and an employee of that news organization. I do not have the name of this case, but I believe that the hearing took place in Fall, 1994.

As you know, I am not an attorney. Please let me know if you need more detailed information.

Regards,

Deni Elliott

Appendix

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CURRENT POSITION

University Professor of Ethics
Director, Practical Ethics Center
Professor, Department of Philosophy
Adjunct Professor, School of Journalism
Book Review Editor, Journal of Mass Media Ethics

EDUCATION

Harvard University: Ed.D., Philosophy of Education, June 1984.

Comprehensive Examinations: Philosophy (passed, April 1983)
Dissertation: Toward the Development of a Model for Journalism Ethics Instruction
Committee: Israel Scheffler, Sissela Bok, Martin Linsky
Qualifying Paper: Media Ethics Literature: A Philosophical Analysis (accepted with distinction, April 1983)
Committee: Israel Scheffler, Sissela Bok, Lawrence Kohlberg

Wayne State University: M.A., Philosophy, December 1982.

Thesis: Ethical Inquiry and Children's Moral Abilities: Some Traditional Views, An Alternative and Implications

Wayne State University: Michigan Secondary Teaching Certification (Journalism, Speech, English), September 1978.

University of Maryland: B.A., Speech Communication minor, Journalism, December 1974.

FUNDED RESEARCH

Development and Pilot Testing of A Graduate Degree Program with a Specialization in Teaching Applied and Professional Ethics, funded by FIPSE, U.S. Department of Education. Project Director. September, 1996-August 1999, $174,000.

Comparative Analysis of Moral Excellence in Business in Japan and America, funded by the International Environmental Institute. Principal Investigator. March 95 - March 96, $10,000.

Curriculum and Faculty Development for the Teaching of Academic Research Ethics, funded by Department of Education (FIPSE). Co-Project Director. Sept. 92-Aug. 95, $219,777.

Production of Educational Modules for the Teaching of Research Ethics, funded by the National Science Foundation (EVS). Principal Investigator. Oct. 92-Sept. 94, $224,999.

The Burden of Knowledge, videodocumentary, funded by the New Hampshire Humanities Council, Montana Committee for the Humanities and the Greenwall Foundation. Co-Producer. Sept. 92-Dec. 93. $58,000.

Ethics & Higher Education Advancement, funded by The Lilly Endowment and Kellogg Foundation. Principal Investigator. Nov. 89-Dec. 92, $320,000.

Ethics and Organ Transplantation, funded by the Peter Kiewit Foundation. Co-investigator on a collaborative project involving the University of Nebraska campuses and Dartmouth. Co-Principal Investigator. June 90-June 92, $134,295.

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COURSES TAUGHT

The University of Montana-Missoula (University Professor of Ethics, 1996; Adjunct Prof., School of Journalism, 1994; Prof. (tenured), Dept. of Philosophy 1992; Mansfield Professor of Ethics in Public Affairs, 92-96)

- Ethics: The Great Traditions
- Ethics Across the Curriculum
- Ethics and Journalism: A Graduate Seminar
- Ethics and Politics: A Seminar for Politicians and Grad Students
- Ethics in Public Affairs
- Ethics in Your Classroom
- Foundations of Moral Philosophy: A Graduate Seminar
- Practicum in Teaching Ethics
- Professional and Public Ethics
- Pro-Seminar in Teaching Ethics
- Research Methods in Ethics

Dartmouth, 1988-1992 (Research Associate Professor of Education, Adjunct Associate Professor of Philosophy, 1990; Research Assistant Professor of Education, Adjunct Assistant Professor of Philosophy, 1988)

- Conflict Resolution in International Affairs
- Ethics and the Professions
- Health, Society & The Physician
- Ideas in Education: Intellectual and Ideological Foundations
- Mass Media and Society
- Philosophy of Education
- Reason and Argument

Utah State University, 1985-1988 (Associate Professor, Department of Communication and Department of Philosophy, 1987; Assist. Prof, 1985)

- Ethics of Mass Communication
- Introduction to Mass Communications
- Mass Media and Society
- Public Relations
- Reporting and Writing for Mass Media
- Seminar in Communications History
- Symbolic Logic

Wayne State University, 1980-84 (Part-time Instructor)

- Moral Judgment and Moral Education
- Practical Reasoning
- Symbolic Logic

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Harvard University, 1982-84 (Teaching Fellow)
Types of Ethical Theory, Harvard College
Workshop in Ethics of the Media, Kennedy School of Government

PUBLICATIONS - Books and Documentaries

Sources and Sorcery.: A New Ethic for News Reporting In Process.

The Humane Abortion (with Rita Sommers-Flanagan) In Process.

1) Elliot D. Cohen and Deni Elliott. *Contemporary Ethical Issues: Journalism.* ABC-CLIO, 1998

2) *Professional Ethics Journal*, Vol. 4, No. 3 & 4. Editor of Special Issue on Ethics in Scientific Research, 1997

3) Judy Stern and Deni Elliott *The Ethics of Scientific Research: A Guidebook for Course Development* Hanover, NH: University Press of New England, 1997

4) Deni Elliott and Judy Stern (senior editor and chapter co-author). *Research Ethics: A Reader* Hanover, NH: University Press of New England, 1997

5) *The Ethics of Asking: Dilemmas in Higher Education Fund Raising.* (Editor and multiple chapter co-author.) John Hopkins University Press. 1995.

6) Carl Greiner and Deni Elliott (eds). *Parts and Parity: Ethics and Organ Transplantation.* Institute for the Study of Applied and Professional Ethics, Dartmouth College, 1995.

7) *The Burden of Knowledge.: Moral Dilemmas in Prenatal Testing.* Writer/Co-producer. Distribution: Direct Cinema Ltd. 1994.

8) *Buying Time: the media role in health care.* Writer/Co-producer. Distribution: Fanlight Productions. 1991
Silver Apple Award, National Educational Film and Video Festival.

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9) *A Case Of Need: Media Coverage and Organ Transplants.* Writer/Co-producer. Distribution: Fanlight Productions. 1990. Bronze Plaque Award, Columbus International Film Festival; Silver Apple Award, Nat. Educat. Film & Video Festival.

10) *Responsible Journalism.* Editor and Chapter Author. SAGE:1986.

PUBLICATIONS - Articles in Refereed Journals

"Social Excellence in Business: An Analysis of KST-Hokkaido and Ben & Jerry's Homemade, Inc." (in process)

"The Myth of Selective Abortion" (in process)

Mary Birch, Mary Trankel and Deni Elliott "A Portrait of the Ethical Professor" (in process)

Rita Sommers-Flanagan and Deni Elliott, "Exploring the Edges: Boundaries and Breaks," *Ethics & Behavior,* (forthcoming)

1) "Researchers as Professionals, Professionals as Researchers: A Context for Laboratory Research Ethics," *Professional Ethics Journal,* Vol. 4, Nos. 3 & 4, pp. 5-16,1997.

2) "Cases for Teaching Research Ethics," *Professional Ethics Journal,* Vol. 4, Nos. 3 & 4, pp. 179-198, 1997.

3) "Evaluating Teaching and Students' Learning of Academic Research Ethics," and Judy Stern. *Science and Engineering Ethics Journal* Vol 2, No. 3, pp. 345-366. 1996

4) "Journalistic Research." *Accountability in Research.* Vol. 4, pp. 103-114. 1996

5) "Defining and Analyzing Journalistic Deception," with Charles Culver, M.D., Ph.D., *Journal of Mass Media Ethics.* Vol 7, No. 2, Spring 1992

6) "Use of Moral Development Theories in the Teaching of Ethics," *Journalism Educator,* Autumn 1991 Vol. 46, No. 3.

7) "On Deceiving One's Source," *The International Journal of Applied Philosophy,* Vol. 6, Summer 1991. No. 1

8) "Family Ties: A Case Study of Coverage of Families and Friends during the Hijacking of TWA flight 847," *Political Communication and Persuasion*, Vol. 5, 1988, pp. 67-75.

9) "All is Not Relative: Essential Shared Values and the Press," *Journal of Mass Media Ethics*, Vol. 3, #1, 1988.

10)"Creating the Conditions for Ethical Journalism," *Mass Comm Review*. Volume 14, #3, 1987.

11)"Standards in Media Ethics: A Conceptual Analysis," *Journal of Mass Media Ethics*, 1 (1), 1985.

12)"Student Press Rights and Tort Liability: A Conflict of Law," *The High School Journal*, 66 (4), 1983.

13)"State Intervention and Childhood Multiple Personality Disorder," *The Journal of Psychiatry and Law*, 10 (4), 1982.

PUBLICATIONS - Book Chapters/Encyclopedia Entries

1) "Media Ethics," *The Dictionary of Business Ethics*., Werhane, P. and Freeman, R., (ed). Oxford, England: Blackwell Publishers, 1998

2) The Great Hanshin Earthquake and the Ethics of Intervention," Cesmir, F. (ed). *International Communication Ethics*. Earlbaum, 1997.

3) "Universal Theories and Moral Development Theories," Christians, C and Traver, M. (eds). *Communication Ethics and Universal Values*. Thousand Oaks, CA: SAGE, 1997.

4) and Marilyn Brown. "Ethics and Animal Experimentation," Elliott, D and Stem, J. (eds) *Research Ethics: A Reader*. Hanover, NH: University Press of New England, 1997.

5) "The Problem of Compassionate Journalism," Black, J. (ed). Mixed News: The Public/Civic/Communitarian Journalism Debate. Mahwah, NJ: Earlbaum, 1997.

6) "Moral Requirements and Picture Choice," in Lester, P. (ed). *Images that Injure: Pictorial Stereotypes in the Media*. Westport, Conn: Greenwood Press. 1996

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7) with Bruce Hopkins, "Law and Regulation." in Elliott, D. (ed.) *The Ethics of Asking*. Baltimore, MD: Johns Hopkins University Press. 1995.

8) with Bernard Gert, "The Moral Context of Fund Raising." in Elliott, D. (ed.) *The Ethics of Asking*. Baltimore, MD: Johns Hopkins University Press. 1995.

9) with Mary Lou Siebert and Marilyn Batt Dunn, "Handling Prospect Research." in Elliott, D. (ed.) *The Ethics of Asking*. Baltimore, MD: Johns Hopkins University Press. 1995

10)"Communication, Biomedical, I. Media and Medicine," *The Encyclopedia of Bioethics, rev. ed.* Macmillan Press: 1995.

11)"Disability and the Media: The Ethics of the Matter," *The Disabled, The Media and the Information Age*. Jack Nelson (ed). Westport, Conn: Greenwood. 1994

12)"Ethics and Mass Communication," *Mass Communication: The Production and Consumption of Information*, Todd Hunt and Brent D. Ruben (eds.). Harper/Collins 1993.

13)"What Counts as Deception in Higher Education Development," *Taking Fund Raising Seriously*, Dwight F. Burlingame (ed). Jossey-Bass 1991

14)"A Case of Need," *Risky Business*, Lee Wilkins (ed.). Greenwood: 1991

15)"Cases and moral systems," "A case of need," "The doctor has AIDS," *Media Ethics: Issues and Cases*. Lee Wilkins and Philip Patterson (eds). Wm. C. Brown Co. Publishers: 1991.

16)"Legitimate Limits on Free Expression," *Ethics and Higher Education*. William W. May (ed.). Macmillan: 1990.

17)"Deception in Journalism," *Ethical Issues in the Professions*. Peter Windt and Leslie Francis (eds.). Prentice-Hall: 1989.

18)"Media and Persons with Disabilities: Ethical Considerations," *Reporting on Disability: Features and Issues*. Mary Johnson (ed.) U.S. Department of Education and Avocado Press, Louisville. 1989.

19)"Tales from the Darkside: The ethics of disaster coverage." *Bad Tidings: Communication and Catastrophe.* Lynne Walters, Lee Wilkins and Tim Walters (eds.). Lawrence Erlbaum Associates: 1989.

20)"Mass Media Ethics," *Mass Media and Society*, Alan Wells (ed.). D. C. Heath and Company: 1987.

21)"Teaching Reasoning," *There's a Gifted Child in Your Classroom.* Wayne County Intermediate School District: 1984.

PUBLICATIONS - Articles for the Trade Press

1) "Doing an Awful Lot That's Right," *Media Ethics*, Summer, 1998.

2) "Journalists' con games can backfire," *Montana Journalism Review*, Summer 1997

3) "Forget Compassion--give me news," *Montana Journalism Review*, Fall 1994.

4) "The Waco Task Force: There's still hope," *Quill Magazine* November/December, 1993

5) "A foundation for informed decision making," The FineLine Legacy," *FineLine*, Nov./Dec. 1991

6) "Plagiarism: It's not a black and white issue," *Quill Magazine*, November 1991

7) "Outing: When the Media Do It To You," *FineLine*, Oct. 1991

8) "A medical condition media-generated money can't cure: Maybe what seems so right is wrong," *FineLine*, Sept. 1991.

9) "Deception and Imagery." *NPPA Photojournalism Ethics Protocol.* July 1991

10)"Thou Shalt Not Trick Thy Source," *FineLine*, July/Aug. 1991

11)"When what's public should remain private," *FineLine*, June 1991

12) "Building barriers: The case against financial involvement," *FineLine*, May 1991

13)"When advocacy is okay: access is an acceptable journalist's cause," *FineLine*, April 1991

14) "Rallying 'round the flag: The press as U.S. propagandists," *FineLine*, March 1991.

15) "Fairness: a casualty of the anti-drug crusade," *FineLine*, Feb. 1991

16)"How now, sacred cow? United Way's favored treatment by media," *FineLine*, Jan. 1991

17)"The Year in Review: 1990's biggest ethical headaches and journalistic bloopers," *FineLine*, Nov./Dec. 1990

18)"As Lile Passes By: A journalist's role is watch and wait," *FineLine*, Oct. 1990

19)"Author! Author! Ethical dilemmas when reporters turn author," *FineLine*, Sept. 1990

20) "Foul Play: The media drive to score on the Isiah Thomas story," *FineLine*, Aug. 1990

21)"Family Feud: Handling conflicts between journalists and partners," *FineLine*, July 1990

22)"They Said It First: Is that reason for going with a story?" *FineLine*, June 1990

23)"Suffer the Children: Journalists are guilty of child misuse," *FineLine*, May 1990

24) "To name or not to name...that is the question," *FineLine*, April 1990

25)"In tomorrow's news...Ethics will be a story subject," *FineLine*, March 1990

26)"Make the choice: Good Samaritan or good reporter," *FineLine*, Feb. 1990

Appendix

27)"Ethics codes/written rules: the problem is the writing," *FineLine*, Jan. 1990

28)"What's news about the news media?" *FineLine*, Dec. 1989

29)"Doing your own ethics audit," *FineLine*, Nov. 1989

30)"How to handle suicide threats," *FineLine*, Oct. 1989

31)"Freedom of expression: Do journalists have a right?" *FineLine*, Sept. 1989

32)"Are we our brother's keeper? You bet we are!" *FineLine*, Aug. 1989

33)"Let's make a deal! The dangers of trading with sources," *FineLine*, July. 1989

34)"Anonymity for rape victims...should the rules change?" *FineLine*, June 1989

35)"Deciding which critically ill person gets coverage," *FineLine*, May 1989

36)"Making the call: from private to public," *FineLine*, April 1989

37)"AIDS and Public Disclosure," "The Scarlet Letter," *1988 APME Ethics Committee Report.*

38)"Identifying AIDS Victims: The Destruction of Dr. Huse," *Washington Journalism Review*, October 1988.

39)"Family Ties: Media coverage of victims' families during the TWA hostage-taking," occasional paper. *National Terrorism and the Media Project:* 1987.

40)"Editors learn the hard way on campuses," *1986-87 Journalism Ethics Report, Society of Professional Journalists.*

41)"Is journalism a profession? ,Yes, and no strings attached," *Freedom of Information, 1984-85 Report of the Society of Professional Journalists.*

42)"The consequences of deception: unwarranted use can damage public trust in journalists;" "Ends vs. means: comparing two cases of deceptive practices;" "Education: avoiding indoctrination through ethics instruction." 1984-85 *Journalism Ethics Report, Society of Professional Journalists.*

43) and Marty Linsky, "The Oliver Sipple Story: The questions it raises for the press," *Bulletin of the American Society of Newspaper Editors,* (653) 1982.

PUBLICATIONS - Articles for the Lay Press (op-ed pieces only)

1) Morality is More Than Getting Away With It. *Los Angeles Times* 8/9/98

2) The Clinton Show. *Seattle Post-Intelligencer.* 8/9/98

3) Lives Less Private. *Seattle Times/Post-Intelligencer.* 2/1/98

4) Investigators' deceptive methods do more harm than Clinton infidelity. *The Missoulian.* 1/26/98

5) Humanizing Abortion, *The Seattle Post-Intelligencer.* 10/15/97

6) Public Officials Tarred by Private Lives. *Newsday.* 5/31/95.

7) The Waco Disaster: Media Were Manipulated, *The Missoulian,* 4/25/93

8) Memo to the media: Tell me everything" *USA Today,* 1/27/92

9) Why name any victims? *The Philadelphia Inquirer,* 5/10/91

10)Reporting Rape Charges: Treating Victims as Victims,*The Baltimore Sun,* 4/28/91

11)The Pentagon presents the bloodless, nonviolent war, *The Philadelphia Inquirer,* 1/23/91

12)Reluctant Hero, *The St. Petersburg Times,* 3/26/89

13)Reporters And Plagiarism, *The (NH) Valley News,* 10/9/87

OTHER RELATED PROFESSIONAL EXPERIENCE

Director, *Practical Ethics Center, University of Montana.* Develop ethics programs for businesses and professional groups; provide faculty development for teachers of 42 free-standing ethics courses; develop topical programs for faculty, students and community members; manage manage office of 5; coordinate activities of graduate and undergraduate student interns and assistants; coach University Ethics Bowl team; design customized graduate degree and post-doc program; 8/96-present

Director, *Ethics Institute, Dartmouth College,* Managed grant and operating budget, coordinated faculty consortium, directed and participated in scholarly research, planned and taught faculty and student seminars in ethics, coordinated activities of staff members, research assistants, and visiting fellows. 8/88-12/92

Columnist, *FineLine.* Wrote "P.S./Elliott", monthly ethical analysis column for journalism ethics trade magazine. 3/89-12/91

Ethics Coach/General Assignment Reporter, *WCSH-TV,* Portland, ME. Developed and administered formal and informal newsroom ethics program; produced news packages for daily television news program. 7/88-8/88

Ethics Coach/General Assignment Reporter, *Louisville (KY) Courier-Journal.* 1/87-3/87

Ethics Coach/General Assignment Reporter, *The Philadelphia Inquirer.* 1/85-4/85

Research Assistant/Case Writer, *Kennedy School of Government, Harvard University:* Researched and wrote teaching cases in journalism ethics. 1/82-6/83

Editorial Board Member, *Harvard Educational Review:* Solicited, evaluated and edited manuscripts for publication. 9/82-6/83

Research Associate/Editor, *U.S. Department of Education:* Researched impact of federal funding on school districts, wrote report for $50,000 funded study. 1/82-6/83

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AWARDS

Who's Who Among America's Teachers, 1996, 1997, 1998
Who's Who of American Women, 1996, 1997, 1998
Who's Who in the West, 1996, 1997, 1998
Who's Who in the World, 1994, 1995, 1996, 1997, 1998
World Who's Who of Women, 1993, 1994, 1995, 1996, 1997, 1998
International Authors and Writers Who's Who, 1995, 1996, 1997, 1998
Who's Who in The East, 1992
Honorable Mention, 1995 Grenzebach Awards, *The Ethics of Asking*
Silver Apple, "Documentary", National Educat. Film & Video Festival 1992
Silver Apple,"News/Reportage," National Educat.Film & Video Festival 1991
Bronze Plaque Award Winner, Columbus International Film Festival, 1990
Rockefeller Fellow in Professional Ethics, Dartmouth College, 1987-88
AEJMC Teaching Fellow, Summer 1986
Outstanding Young Women of America, 1983
Marion and Jasper Whiting Foundation Fellow, 1983-84
Harvard Educational Review, 1982-83
Mark DeWolf Howe Summer Research Grant (Harvard Law School), 1982
Wayne State University, Graduate Merit Scholarship, 1980-81
Institute for the Advancement of Phil. for Children Scholarship, 1979

ASSOCIATIONS

Association for Practical and Professional Ethics (Executive Board Member, elected)
American Philosophical Association
Association for Education in Journalism and Mass Communication
Society of Professional Journalists
Institute for Medicine and Humanities Executive Board Member
Citizen Review Board (appointed by District Court)
STAR (Support, Therapy, Assistance and Rehabilitation) Dog Services
Delta Society

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Supreme Court, U.S.
FILED
JUN 15 2001
OFFICE OF THE CLERK

No. 00-1714

In The

Supreme Court of the United States

C. DOLORES TUCKER and
WILLIAM TUCKER, her husband,

Petitioners,

v.

RICHARD S. FISCHBEIN; TIME, INC.;
BELINDA LUSCOMBE; NEWSWEEK MAGAZINE,
and JOHNNIE ROBERTS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Why the petition for certiorari of C. Delores Tucker and William Tucker should be denied and the petition for certiorari of respondent Richard S. Fischbein should be granted?

PARTIES TO THE PROCEEDINGS

(Rule 14.1(b) Statement)

Petitioners

Petitioners are C. Delores Tucker and William Tucker.

Respondent

Respondent for this opposition is Richard S. Fischbein.

BRIEF IN OPPOSITION

Respondent Richard S. Fischbein respectfully submits this opposition to the writ of certiorari of petitioners C. Delores Tucker and William Tucker to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on January 9, 2001. The Third Circuit Court of Appeals entered an order denying a timely petition for rehearing and petition for rehearing *en banc* on February 14, 2001.

The jurisdiction of this Court is invoked by petitioners under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Among other constitutional and statutory provisions, this case involves the First Amendment to the United States Constitution as made applicable to the states by the Fourteenth Amendment.

The First Amendment states in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fourteenth Amendment states in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARGUMENT

Respondent Richard S. Fischbein ("Fischbein") respectfully submits this opposition/counter-statement in order to clarify that he has previously filed a petition for a writ of certiorari with respect to the same judgment from which the petitioners C. Delores Tucker and William Tucker ("petitioners" or the "Tuckers") herein have filed the instant petition. In his petition, Fischbein contends that the writ should be granted as to him because: (a) his allegedly defamatory statement was an opinion based upon fully disclosed facts, and as such was constitutionally protected under the First Amendment; (b) his allegedly defamatory statement was also privileged commentary by a party (and attorney) to a litigation about that litigation; and (c) reversal by the Third Circuit of the district court's award of summary judgment on the grounds that the Tuckers, public figures, could establish actual malice by clear and convincing evidence was contrary to established Supreme Court precedent. Accordingly, Fischbein believes that the Tuckers' petition for a writ of certiorari should be denied, but the separate petition for writ of certiorari by Fischbein should be granted.

Fischbein shall not repeat the arguments advanced by him in support of his petition for a writ of certiorari in this response. However, one marked contrast between his and the Tuckers' petition bears noting. While the Tuckers seek to have the Court review primarily issues of Pennsylvania defamation law, Fischbein seeks review of a significant First Amendment issue. Fischbein – the only remaining defendant in this action after the Third Circuit decision – is further cognizant that the Tuckers' petition for a writ of certiorari is targeted at those defendants in whose favor the Third Circuit affirmed summary judgment dismissing the complaint. Consequently, this response only briefly addresses the arguments raised by the Tuckers to the extent that they impact upon Fischbein.

The Tuckers' suggestion that the trial and appellate Courts erroneously construed certain record evidence "out of context" is not an issue that rises to a constitutional level. Moreover, the undisputed fact remains that the Tuckers' counsel admitted in deposition testimony that loss of consortium can include loss of sexual relations, and that the Tuckers' original and amended complaint had been drafted to encompass any viable claim. Even absent such an admission, however, for the reasons stated in Fischbein's petition for a writ of certiorari, and for the reasons stated by Judge Nygaard of the Third Circuit in his thoroughly reasoned dissenting opinion, the record was replete with evidence that the Tuckers' loss of consortium claim never unequivocally excluded damages for loss of sexual relations during the relevant time period, including the period following the service of the first amended complaint, and was always susceptible to a contrary construction as a matter of law.

The Tuckers' contention that the panel failed to address specific Supreme Court, Third Circuit, and Pennsylvania State law cases is without merit. The panel acknowledged that Pennsylvania law controls. And the Tuckers' reliance on the case of *Masson v. New Yorker Magazine*, 501 U.S. 496 (1991) is misplaced. In *Masson*, unlike here, the author had misquoted taped interviews with the plaintiff in numerous passages contained in a series of non-fiction articles where the reader was likely to interpret them as verbatim conversation.

As to Fischbein, the precedent cited by the Tuckers is factually distinguishable from the case at bar. In none was the alleged defamatory statement one of opinion based upon fully disclosed facts. Also, in Fischbein's case, the statement was privileged commentary made by a party to a litigation, not by a reporter. As demonstrated in Fischbein's petition for a writ of certiorari, the complaint should have been dismissed as against him on account of these undisputed facts. As further demonstrated in Fischbein's petition, the Third Circuit ignored longstanding precedent precisely on point when it selectively upheld the award of summary judgment against the other defendants, but failed to dismiss against him. Therefore, Fischbein's separate petition for a writ of certiorari should be awarded, but the instant petition by the Tuckers should be denied.

CONCLUSION

For the reasons stated above, Fischbein's petition for a writ of certiorari should be granted and the Tuckers' petition denied.

Respectfully submitted,

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